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LOCAL GOVERNMENT IN ENGLAND

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LOCAL GOVERNMENT IN ENGLAND

BY

JOSEF REDLICH

OF THE FACULTY OF LAW AND POLITICAL SCIENCE IN THE UNIVERSITY OF VIENNA

EDITED WITH ADDITIONS BY

FRANCIS W. HIRST

OF THE INNER TEMPLE, BARRISTER-AT-LAW

IN TWO VOLUMES

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THE AUTHOR'S PREFACE

I

THIS book is the result of studies, prosecuted for many years, concerning the development of the domestic politics of England during the nineteenth century. What remains to be said of the origin and plan of the book, besides the explanations given in the introductory chapter, is mainly of a personal character.

When I came the first time to the shores of England, more than ten years ago, it was as a student of English Law and Constitution entirely imbued with the ideas and judgments which the great German jurist and scholar, Rudolf von Gneist, had expressed in the many legal and political writings of his long career. But soon I discovered that those writings were not only in many ways obsolete, having been long passed by current practice and by modern legislative reforms, but also that the general idea of the modern political history of England, as given by Gneist, stood in inexplicable contradiction to the real development and the true nature of political facts. These first impressions have been strengthened by incessant study in England itself, until out of my doubts of the theories and judgments of Gneist there has resulted a view of modern English politics, independent of, and in essence opposed to, those views of Gneist which have so constantly been accepted as authoritative by continental learning. Here I have not to explain or justify a view which must rather be justified by the book itself. In this place I only want to emphasise my obligations; for, notwith-

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standing my refusing the theories of Gneist, I never can suppress a feeling of deep and reverential gratitude to this master of the German science of English constitutional law. Gneist's studies have indeed done what he once claimed: they have cut a first path through a huge and dense forest. Nobody will forget the discoverer of this first path, although he himself continues his way in quite another direction from that indicated by the pioneer. The high and entirely deserved praise which Gneist had earned as historian of the English Constitution secures him a lasting monument in the German school of political science; though his exposition of the modern English State is proved erroneous in many and important points, though his theory of "Self-Government" is shown to be one great mistake, though his influence on German constitutional doctrine and law appears to have been rather unfavourable to their progressive development. Gneist's theories, which are expounded and criticised in the third and last part of this book, must be regarded as fruit on the tree of the politico-metaphysical speculation of Hegel and Lorenz von Stein; and not less as the consequence of a certain doctrinairism, which is peculiar to Gneist in common with the whole famous historical school of the German science of law to which he belongs. It is the aim and purpose of the following pages to give, in contradiction to those methods, a realistic view of the evolution of English local government generally, and especially of its modern structure in law and practice.

The system of local government here dealt with is English in the narrow sense of the word. The corresponding institutions of Scotland and Ireland are entirely outside the scope of this book. And the administrative organisation of London is also left out. For metropolitan government has its own special problems both of practice and theory, and must therefore be treated quite independently, although all the elements of local organisation in the Metropolis have their counterparts in the general administrative organisation of England. I

therefore resisted the temptation to give even in an appendix a short analysis of the recent reorganisation of London government which has been effected by the Acts of 1888 and 1899.

. . . . . .

There remains to me the pleasant duty to express my best thanks for the manifold and important help with which I have been favoured in England in the course of my studies. Especially I want to express my thanks to all the Town Clerks, Clerks of the County Councils, and other municipal officers, who have given me very valuable aid by furnishing numerous reports, standing orders, and other most valuable material for the study of the present local government of England. The extraordinary kindness and liberality shown to a foreign and personally unknown student from that quarter has been one of the pleasantest experiences of my life, and appears to be in itself a most attractive feature in the picture of the modern democratic local government of England.

To all those gentlemen who favoured me in this way I would express my warmest thanks.

Not less is my obligation towards the Director of the London School of Economics, Professor W. A. S. Hewins, by whose kindness the library of that institute, so well adapted for studies in the field of English local government, has been opened to me. Finally, I must give here expression of my heartiest thanks to my dear friend, Mr. Francis W. Hirst, in London. To his friendship, his never-tiring kindness, and his expert advice in so many questions and problems of local government, I owe in a very high degree experience and information which never could have been won by a mere study of legal and political literature.

II

The above was the preface which, two years ago, I prefixed to the German edition of my book. That I am now able to bring it, translated into English, before the British

public gives me the highest possible satisfaction. I have indeed not to search a long way in looking for the person to whom I owe especially and entirely this satisfaction. I have only to continue where the words of my German preface above end. I have to express the tribute of my sincerest thanks to the translator and editor of the book in its present form. He has originated the idea of the English edition, and from beginning to the end he has worked out the plan with admirable skill, with a comprehensive and deep knowledge of the subject, and with a real love of the difficult task he had set before himself.

Every one who compares the German and English text of the edition will see what accomplished work has been done by Mr. Hirst. The reader will see that it is not a mere translation of the German words and phrases, but a real English book. The translator has not only mastered fully the difficulties of the "learned German," in which I am afraid the book seems to be written in some parts, and has grasped exhaustively the ideas of the author, but he has also shown himself able in an admirable way to express the opinions of the German author in an original English form of thinking. But apart from the qualities of the style, on which a foreign author dare not fully pronounce, I must give my deepest acknowledgment of the merits of the editor, who has amended the book in every part, partly by numerous additions, partly by removing some errors of the German text. Finally, Mr. Hirst has added two chapters written by himself, which are both most valuable improvements of the book. I would especially mention the chapter on Education, which, entirely re-written by Mr. Hirst, gives a brilliant and thorough sketch of the new Education Act of 1902, and so brings the book in this essential respect up to the last stage in the development of English local organisation.

And so I look gratefully on what Mr. Hirst has done for my book, as on a generous work which only true friendship could bestow upon the author.

I never have concealed from myself the fact that it seemed rather bold for a foreign student of English national institutions to bring the result of his studies before the English public. For I inevitably had to ask myself whether English readers would regard a foreign author as competent to analyse and criticise their own legal and political institutions. Amidst these doubts it has been of the greatest encouragement and honour to me that already, in its German shape, my book had found the kind attention of one of the most distinguished of living authorities on Constitutional Law in England—of Sir Courtenay Ilbert. I may be permitted to express to him thus publicly my warmest thanks, and to emphasise how much I feel indebted for the extraordinary kindness and important help he has bestowed upon the author and translator of this book, by reading a large part of the proofs and giving invaluable hints on some important points.

In publishing my book I had to overcome not only the great difficulty underlying every endeavour to understand rightly and criticise justly foreign institutions; but I had also to encounter the mistaken authority which Gneist's theory of the English Constitution and "Self-Government" has possessed on the whole Continent for twoscore years. So far as can be gathered from reviews of my book which have been published in the last two years, my endeavour to make German public opinion acquainted with the real life and structure of English local government, and to supplant Gneist's theories in favour of the simple truth, has not been wholly frustrated. In this connection I am perhaps permitted to point gratefully to the reviews written by the famous German statesman and economist, Dr. Schaeffle, in his *Zeitschrift für die gesammte Staatswissenschaft;* by Eduard Bernstein, in the *Wiener Wochenschrift, Die Zeit;* and by C. Hugo, in the *Neue Zeit;* and to the essay published by an authority in comparative administrative law like Dr. Münsterberg, in the *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft,* edited by Professor Schmoller. But, nevertheless, I do not doubt that there

is still a force of resistance, not to be underrated, in the learned and political world of Germany against the ideas expressed in the present book concerning England. It must seem hard to many of the pupils of Gneist to agree with the author in his outspoken condemnation of what Gneist has taught our German political science to think on modern English local government. And especially it seems difficult to many continental critics of England, fed on the books and pamphlets of Gneist, to disbelieve his principal view that the political institutions of modern England are for the most part nothing else than products of the decay and ruin of all that has been grand and true in the old English constitution. This belief in the somewhat fabulous England of Gneist's grace has been further strengthened in Germany by a curious opinion not seldom to be met with among German students of politics—namely, that in England itself Gneist has been looked at and is still regarded as an authority on the law and practice of the English constitution and of English local government. I, for my part, have never been able to verify this assumption by any experience during my many sojourns in England, and I gravely doubt whether Gneist, whose great merits as a historian of the English constitution have been acknowledged by no less an authority than the late Bishop Stubbs, has ever been regarded in England as an unbiassed and trustworthy teacher of modern English law and politics. Therefore, it is for me a matter of highest satisfaction and importance to have been informed of Sir C. P. Ilbert's own experience and opinion in this matter. This information I have received in a letter, which is here given in full with the kind permission of Sir C. P. Ilbert :—

SPEAKERS COURT, PALACE OF WESTMINSTER,
5th November 1902.

DEAR DR. REDLICH—I read your book on Local Government in England with great interest, and am very glad to hear that it is to appear in an English dress.

It will be valuable to English readers as a study of English institutions, from an outside point of view, by one who has derived his knowledge not merely from books, but also from observation of the way in which the institutions work in actual practice.

I was specially interested in your criticism of Gneist. I read Gneist's books some thirty years ago, at a time when they supplied much valuable information which was not to be found in any English book, and I read them with much admiration, and, I hope, some profit.

But even Gneist's sincerest admirers must admit that he sometimes seriously misconceived the spirit of English institutions, that his attempts to put English facts into German formulæ were not always happy, and that he extravagantly idealised the eighteenth century system of government by Justice of the Peace.

Far sounder appears to me the view which I understand to be yours, that the English local government of the nineteenth century, instead of departing from, is a legitimate development of, the fundamental principles of English institutions, and a necessary adaptation of them to the political, social, and economical needs of the time.

It is natural to look at foreign institutions through home spectacles, and it would be natural for a writer familiar with the centralised institutions of the Continent to regard English local authorities as organs and agents of the central authority.

But nothing could be further from the truth.

English local councils, whether county councils, borough councils, or district councils, are public bodies discharging public functions, and exercising their powers on lines and within limits defined by Parliament. But they are independent bodies, not agents, and, as every English minister knows, they decline to take orders from the central executive, except in the limited class of cases in which the Legislature has conferred on that executive powers of interference.—Believe me yours very truly, C. P. Ilbert.

Apart from the deep personal satisfaction given to me by such authoritative confirmation of my own views, I am fully conscious of the great importance of Sir C. P. Ilbert's statements for a successful enlightening of the learned and public opinion in Germany concerning the true nature of modern English local administration.

There is, I think, not yet written, either in England or in Germany, a book which *should* be written—a book explaining the most curious phenomenon in the modern political history of Europe, namely, the fact of the partly indirect, partly immediate, but always prevailing influence of the English political institutions in the evolution and revolution of modern political thought, as well as of constitutional law and practice on the Continent during the eighteenth and nineteenth centuries. To the student of this history there would probably appear as one of the most important results of his investigation the paradoxical but indisputable fact, that not the real English constitution, but a more or less misconceived picture thereof, not the true tale of English things, but a rather peculiar legend of them, has played a prominent part in that process of forming and remodelling the constitutional laws and political ideas of continental nations. Notwithstanding, nobody would dare to deny that continental Europe has been vastly benefited by even this too-often pseudo-English pattern. Must there not be drawn the conclusion that a better discernment and understanding of the real essence of English constitutional law and custom would still prove a strong and healthy impulse for our future political development?

In the firm conviction that such a conclusion is justified, this book has been written. But nothing is further from my mind than to wish for anything like a mere imitation of Anglo-Saxon institutions by other nations. If modern political science has taught us anything it is this, that only on the lines prescribed by its own individuality and history can any nation pursue a strong and healthy development. But it is

as *the* great standard of statecraft and political capacity, developed by the English people, living in their happy insular circumstances, sooner, more strongly, and with more enduring persistence than has been displayed by most of the other branches of the Teutonic race, that the English constitution must be studied. It stands, together with its strong offshoots in the United States and the great colonial federations, before the eyes of continental Europe as the first lesson of what self-government really is, and brings home to us the fundamental truth, that to convert step by step the State into the commonwealth of a society governing itself, is the highest moral and political aim towards which modern progress must lead all nations in the times that come.

JOSEF REDLICH.

VIENNA, *January* 1903.

TRANSLATOR'S PREFACE

THIS work was begun nearly three years ago, before the publication of my friend Dr. Redlich's book. In reading the proof-sheets of the original I was deeply impressed, and, abandoning a long-cherished idea of writing upon this subject myself, ventured to propose to Dr. Redlich that he should allow me to act as his English interpreter. He welcomed the suggestion, and has since helped and encouraged me in every possible way. This book is the result.[1] It does not profess to be a literal or mechanical translation. That was not my aim—I should say our aim; for Dr. Redlich has given my proof-sheets the closest attention and criticism. Many amendments and additions have been contributed by us both; and those for which I am responsible have without exception been revised and approved by him. Consequently, it is not necessary to give a detailed account of the amplifications, additions, or abridgments which have been made to the text of the original. Generally speaking, they have been dictated by regard for the different atmospheres which the two versions must breathe. Explanations necessary in a German work upon English local government may not be required in an English work on the same subject. Details tedious to a German reader may be useful to an English one. It has been desirable in some chapters to quote more freely from statutes and cases; and my attempts to illustrate and develop Dr. Redlich's financial paragraphs, and to fill in some outlines in his broad and

[1] With the exception of the Author's Preface (*rubesco referens*), the whole of the translation is my own work.

masterly survey of the law and framework of English local government, have involved an amount of work which can only be understood by those who have traced and retraced our labyrinth of local government statutes. Dr. Redlich has mentioned that the two chapters on Borough Extension and on Education are done by me, the latter having been made necessary by the Education Act of 1902, by far the most important statute of those relating to local government which have been passed since the appearance of Dr. Redlich's book in Germany.

Lastly, I must allow myself the pleasure of thanking many kind friends, who have read portions of the proof-sheets, for valuable criticisms and suggestions, and especially the Right Hon. H. Hobhouse, M.P., Sir Courtenay Ilbert, Mr. Charles Milner Atkinson, Mr. Edwin Cannan, Mr. J. A. Simon, and Mr. R. Cunningham Glen, in whose chambers I have had the good fortune to obtain a practical acquaintance with the working of local government law.

Mr. J. E. Allen has done me the great service of reading with a critical eye the whole of the proofs, and of preparing the table of statutes and cases. Mr. E. T. Woodhead has contributed from his experience to the chapters on District Councils. Mr. W. J. Jeeves, the Town Clerk of Leeds, has most kindly criticised one or two chapters; and my friend Mr. H. O. Stutchbury has helped me from his store of practice and precedent to make considerable additions to the chapters on the Local Government Board, of which no writer, so far as I am aware, has hitherto furnished any sufficient account. There are many others to whom gratitude is due, and felt, though not here expressed. It is hardly necessary to add that none of our benefactors are in any way responsible for the opinions which are expressed in these volumes.

FRANCIS W. HIRST.

1 New Court Temple,
January 1903.

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INTRODUCTION

During the last seventy years the English constitution has undergone profound and comprehensive changes, both in its form and in its spirit. From the passing of the first Reform Bill down to the establishment of parish councils, is a period of sixty-two years, during which reform followed reform. All the institutions of the realm were assailed and reconstructed in turn. This outward and visible process was directed and inspired by a new conception of the nature and duties of government, and by a radical though peaceful change in the political life of the nation, both in intimate association with one another, and with that development of capitalism and industry which made England the greatest manufacturing and commercial country in the world. If a single epithet be sought to mark the most essential characteristic of national growth during this period, the word "democratic" should be chosen; for the reform movement in England, consummated in the nineteenth century, has played a great and influential part in that vast drama of democracy which, beginning with the revolutions in America and France, has been acted with different degrees of success on every national stage in Western and Middle Europe. But although the torch of democracy illumines the actual development of England during the last century, it still leaves many of the later phases in darkness or obscurity. To understand the movements and changes of the last two generations, the great provinces of social life must be separated and studied apart, in order that the results of the triumphs of democracy may be brought into clear relief.

The study of English democracy in its social and economic environment has been earnestly and successfully undertaken both in England and in Germany. Many great problems have

been subjected to scientific examination from many points of view. Widely as the theories of Engels and Marx, the founders of the social-democratic doctrine, of the German socialists of the chair (and especially Brentano and his school), the discoveries and leading ideas of Webb, Thorold Rogers, and Booth, diverge and conflict, their works have all helped to make the social economy of modern England intelligible.

But while great and fruitful progress has been made in this part of the field, thanks largely to the work and influence of German investigators, another part of the problem has been almost entirely neglected. That part may be stated as the development of the English constitution and of English administration under the influence of Liberal, Radical, and Socialist ideas—that is to say, the democratic reformation of English government. On this road German science has stuck fast at the point reached, shortly after the middle of the nineteenth century, by Rudolf von Gneist. The almost unparalleled authority won by Gneist's treatises on English government over the whole Continent, and especially in Germany,—an authority scarcely yet questioned by any serious criticism,—has coloured and prejudiced all continental treatises on the later reforms of English administration. By a peculiar combination of historical learning and political prejudice, Gneist was led to believe that the English constitution reached maturity in the eighteenth century, and has been ever since falling away from that state of perfection. Hence each reform had to be regarded and censured as a step downwards in the ruin of English constitutions. Gneist impressed his views upon the learned world of Germany, and they are still generally accepted. But political science is nothing if it is not an investigation of the concrete, and the result is that, as regards English politics, its students and professors find themselves involved in a hopeless inconsistency. On the one hand, their social economists, with the aid of a plentiful supply of blue books, are able to show conclusively that in England, the type and pattern of a capitalist State, the working classes have been emancipated, and that wise legislation has helped to diffuse education, health, and plenty among large classes of the community. With all this educated Germans are familiar enough. They know that the social condition of the English

people has been improved out of recognition by a multitude of Acts, which have worked side by side with Trade Unions, Co-operative Societies, Friendly Societies, and the other spontaneous forces of industrial democracy.

Then the student turns from this picture of social economy to the picture drawn by Gneist and his disciples of English government and its organisation. He passes from a description of progress to a description of reaction, from a steadily rising to a steadily falling standard. How is it, he is driven to ask himself, amid all these signs of improvement in the conditions of society, that this English State, with enlarged functions and increasing activity for good, has been sinking, to borrow the Gneistian formula, step by step from the "self-government" of the eighteenth century? How can that amelioration in the laws and conditions of society be reconciled with this degradation of its structure? To end this perplexity was one of the objects of this work; for the contradiction can only be removed by patient inquiry, undertaken with a judgment free from the incubus of Gneist's dogmas and theories, into the present organisations and functions of local government in England,—an inquiry comprehensive in its scope, searching in its applications, and carried along the lines upon which the laws and institutions of English government have actually developed. We shall seek then to present a picture of the English system of local government as it exists in law and as it works in practice. That picture will be preceded by a historical account, which is designed to show that the present structure and functions of local administration are derived from and determined by fundamental principles of the constitution,—are a natural growth from those eighteenth century institutions which Gneist eulogised as "self-government" in the only true sense of the word, instead of being sickly plants imported from foreign and revolutionary nurseries.

It will then appear that the English system of local administration represents the direct influence of the political and social ideas of democracy upon the organisation and functions of government, and that the form of English institutions harmonises, instead of conflicting, with the spirit of social and economic legislation. The work then is divided in accordance with its purpose into three parts—historical,

descriptive, and critical. The first is intended to depict the process of development by which the institutions of local government took their present shape. The second part describes the existing system, beginning with municipal boroughs and ending with Parliament and the courts of law. The third and shortest part is mainly concerned with Gneist's theories.

Lastly, a word with regard to the term "local government." In its ordinary use, which is adopted in this work, local government includes not only the local activity of public authorities,[1] but their organisation and the legal conditions under which they exercise their functions. What a wide range of subjects is covered by the term will be realised if we recall the fact that the organisation of the militia has for many hundreds of years been a branch of local administration in England. *Innere Verwaltung* is the German technical term which most nearly corresponds to "local government," and occasionally, in order to give the slightly wider meaning of that term, we have used the expression "internal administration." Continental writers under the influence of Gneist are still in the habit of using the word "self-government" as a synonym for English government, and more especially for the system prevailing in England during the eighteenth century. Needless to say, "self-government" is not used in that special sense in English law or in English literature. Again, the German *Kommunalverwaltung*, to say nothing of other discrepancies, would fall far short of the full meaning of "local government," since it only applies to a particular element in the organisation. It has for many centuries been the most characteristic feature of public authority in England that all, or nearly all, the functions of home government, for the preservation of order, the protection of citizens, and the promotion of common interests, are functions of local government pure and simple. It is impossible to give an exhaustive description of local government by a reference to its objects, which are increased in number every year by private and public Acts; but it may be defined generally as the carrying out by inhabitants of localities, or by their elected representatives of the duties and powers with which they have been invested by the Legislature, or which devolve upon them at common law; and

[1] To which German jurists usually confine the term.

therefore not *self*-government (*Selbstverwaltung*) but *local* government is the right technical term. The antithesis between a *central* function of the State and a local activity of citizens prescribed and ruled by laws, which is involved in this definition, is the distinctive characteristic of English local government. On the one hand, public administration of local affairs can only be carried on by local authorities. The sovereign authority must act through a local medium; it cannot itself take in hand the business of local government. This principle underlies the whole organisation of the local authorities, yet those authorities are living members of the constitution. They are subjects as well as administrators of the law. Though Parliament cannot carry on local administration in a given district, save indirectly through the local authority, yet Parliament made the local authority, and can at any time unmake it, and can at any time confer or take away any power or duty it chooses. And if the local authority exceeds its powers or fails to perform its duties, it is responsible for its excess or deficiency in an ordinary court of law. These unifying principles have remained unimpaired by the great reforms in spite of enormous changes in the means and objects of administration, and of the development of a certain form of central control over many branches of internal administration. Thus the organisation of local government secures the free co-operation of citizens in the management of their common interests, and affords a contrivance for transmuting the dull mechanical forces of a central government into active and vigorous life. The hard features of law, the red tape of departmental rules, gain in real strength and lose in harshness when they are interpreted by a self-governing local community. To portray then this organisation in all its elastic vigour, to define the scope of each authority and describe its functions, are the aims and objects of this book. We shall be concerned with the formal or constitutional law of internal administration, and but slightly with its material laws—that is to say, with such enactments as those which regulate drainage, highways, and streets, buildings, gas and water supply, poor relief, and other provisions which only interest us in so far as they prescribe the spheres of local activity. For it is our prime purpose to present a comprehensive picture of the

organisation and functions of local government in England, to lay bare the constitutional, political, and social foundations upon which the structure rests, and finally, to show how public authority in the fulfilment of its lawful powers and duties acts upon the whole internal life of the nation.

BOOK I

HISTORICAL

PART I

THE DEVELOPMENT OF ENGLISH GOVERNMENT UP TO THE END OF THE EIGHTEENTH CENTURY

CHAPTER I

THE MECHANISM OF THE CONSTITUTION

The first task which lies before us is a broad survey of the English constitution and administration at the end of the eighteenth century. The present system of local government in England cannot be fully and faithfully portrayed without a historical background; for only then can we distinguish clearly, in the existing mechanism of English government and in the ideas which express themselves through that mechanism, between what is inherited from the past and what is newly acquired; only then can we perceive how the two elements have been fused and blended together to form a new and living being with pronounced political features. The change that has come over our conception of human society is one of the most striking of the intellectual transformations of the nineteenth century. We have learned to think of the State and its institutions as a growth. But for no State is the historical method so indispensable as for England if we want to understand to-day the law and structure of her constitution. For nowhere else can be found a State with a chain of development so unbroken. Nowhere else are the simplest elements of a primitive form and primitive activities so threaded into the complex fabric of the present, thanks partly to the external

History and method.

work of laws and customs built up for a thousand years, partly to those inward modifications—economic, social, ideal—which determine the development of laws and societies.

And so it comes about that a survey of the English constitution at the end of the eighteenth century will necessarily involve a grasp of at least the main principles of its earlier development. The question why this period is taken as our real starting-point requires no very recondite answer. In English, as in continental, civilisation, the eighteenth century was a true *ancien régime*—that is to say, the chapter which concludes a long development of national history and perfects the political and legal conceptions belonging to and arising from a social and economic structure fundamentally unchanged since that development began. On one side of the channel the chapter ended abruptly; on the other, it was unnaturally prolonged; for, by a remarkable coincidence, the French Revolution brought about two opposite results. It put a terrible end to the *ancien régime* in France; it preserved in force the old political machinery of England half a century beyond its natural and legitimate term. How this came about shall be explained in another context. It is enough now to affirm the paradox that the English eighteenth century closed in 1832. The years which fall between the outbreak of the French Revolution and the overthrow of the Bourbons in 1830 are an epoch of artificial torpidity in the history of English government, allowing its forms to stiffen in the mould which had been perfected in the first half of the eighteenth century after more than a hundred years of growth. In this historical retrospect the reader must needs observe the whole architecture of the English constitution in its horizontal aspect, in order that he may realise the incomparably organic nature of its development. Every system of internal administration—and particularly the English system—is a living part of the whole system of government and an expression of the distribution of social power. The fundamental notions of politics and policy which find expression in the whole constitution of a people can be understood in their true significance only when they are seen to be the necessary products of the ruling system of government and law. And conversely, the meaning of a legal and political system, whether on its legis-

lative or on its administrative side, will only be fully grasped if it be taken in conjunction with the political character of the whole community and so handled.

And in this connection a word must be said of the method by which the conclusions about to be presented have been reached and the picture drawn. One might have been content to register and analyse the existing institutions of the English State and to outline the principles of its constitution. That is the method of the jurist. He can dissect the body of a State and describe its limbs, but if he tries to represent either body or limbs in their living movements he inevitably fails, whatever the State and whatever the stage of its development. How much more impossible then his success where a constitution shows even on its surface an almost inextricable mass of unwritten customs, judge-made precedents centuries old, silent conventions and understandings, solemn contracts between people and King or Parliament and Crown, innumerable provisions scattered about among the written enactments of 800 years,—where, in a word, he is dealing with the English constitution.[1] In this, more than in any other instance, it is of supreme importance to treat the constitution in the concrete, as an active function of the national life as a whole; and therefore any one who wants to understand English government, or to make it understandable, must necessarily explain the ruling canons and principles of the constitution, not only in their legal context, but also in their political character, as so many abstract expressions of actual social conditions, which have never been called into existence by the mere authority of a doctrinaire, but have slowly grown up and established themselves, as a result of conflicts between the different orders and classes of the nation, and the different political ideas which those orders and classes respectively embodied.

The English constitution.

Strange to say, though England never had a written and codified constitution, no State has grown so clearly, or even in a sense so logically, from its historical and legal foundations. Ever since the Anglo-Saxons and Normans were welded together into one nation a steady progress has been witnessed in the material and moral welfare of the community, and the State has enjoyed a constant

[1] Cf. Anson, *The Law and Custom of the Constitution*, vol. i. pp. 33, 399.

and uninterrupted development from the simple rules and fixed principles of the common law. Under this conception of common or customary law are embraced all the leading institutions of English polity. By common law the King wields his sceptre; by common law the King in Parliament legislates, and the King in Court gives judgments, and the King in Council executes the will of the law. Even the territorial division of the country into counties is part of the common law. Nay, the whole legal history of English polity is but a differentiation of the elements which existed in these early rules and institutions. Battles, revolutions, statutes, have only forced these elemental germs to bud and grow in conformity with the interests of the classes which happened to be in the ascendant; and up to the present day not one of these first principles or institutions has been formally set aside or abolished. Every new piece of machinery, every new principle, that has been introduced, has been reconciled to the older parts and fitted into the constitutional system. Endless as have been the changes made during the last two centuries in the real functions of the great offices of State, in their actual relations to one another, and in their national significance, yet their forms have always remained the same. Perhaps the most striking example of all is provided by the highest office of State. Formally the Crown is still, as it always has been, the apex of State activity. The fundamental division into legislator, administrator, and judge still appears in form as the triple function of one organ, the King. The Parliament, the Ministry, and the Courts of Law are still made to appear as the three great Councils of the King. But all this carefully-guarded, piously-conserved tradition is no more than a venerable pretence. The King is still to-day to all appearance the law-giver of the English people. A law is still enacted by the King's most excellent Majesty with the advice and consent of the Lords Spiritual and Temporal, and the Commons; but in the last two centuries of law-making the will of Parliament has prevailed over the will of the King. Again, the English constitution knows nothing of a Cabinet, and a Cabinet Minister still carries out his administrative acts as a member of the Privy Council — the secret advisers of the Crown; but for well-nigh two centuries this Council

has never met in its full numbers for the business of State.[1]

The King is still in form entrusted with the full powers of sovereignty, and in pursuance of these—to all appearances by his own free choice—he summons statesmen to share in the councils of the State. But it has been an inflexible rule for more than a century that the King can only summon to the conduct of affairs the leader of that party which commands a majority in the House of Commons.[2] Contradictions so profound between the form and the reality of her institutions are to be explained by the conjunction of two national traits in the constitutional history of England—a pious feeling of conservatism for ancestral forms and ceremonies on the one hand, on the other a political ingenuity which has exercised itself in so differentiating and developing the root-principles of the constitution, that the new legislation which it introduces from time to time may not only meet the spirit and needs of the new age, but conform outwardly with the traditions and prescriptions of the old.[3]

And so whoever wishes to understand rightly the English constitution must be able to put the right construction on its formularies, and to comprehend the meaning of the national institutions which stand before his eyes like the allegorical figures on some venerable tapestry. He must needs resolve into their political and social elements things that are hidden to-day under names and forms inherited from the distant past, because those names and forms no longer afford any

[1] See Mr. John Morley's *Walpole*, pp. 144-147, for some early and doubtful cases in the period of transition; and Hearn's *Government of England*, p. 204.

[2] Sir Robert Peel's three months' administration in 1834, and Mr. Disraeli's longer term in 1866-68 are exceptions which prove the rule.

[3] Cf. Hearn, *op. cit.* p. 3: "The status of the Crown, and the status of either House of Parliament are as clearly defined as the status of a corporation or an ordinary citizen. From the days of Bracton, who declared that *lex facit, quod ipse sit rex*, to the days of Lord Denman, who ruled there is no body in this country which is not subject to the law, the principle has been unchanged."

This is the principle of the unlimited sovereignty and complete uniformity of the law. The law is the same for everybody to-day as it was 500 years ago. There is no distinction either of kind or degree between *privatrecht* and *öffentliches recht* such as that which the continental States have borrowed from the law of Imperial Rome, and there is not even the notion of *droit administratif*.

standard for measuring the real functions and activities of their organs in the body of the living State. The discrepancy of form and content may be brought into prominence by a historical treatment of the deep processes of change which were at work in the eighteenth century. For the eighteenth century proved the decisive period, in spite of a conspicuous absence of important statutory alterations in the constitution. In this respect it presents a remarkable contrast to the seventeenth. The seventeenth, with its two revolutions and its foundation of a new dynasty on fixed constitutional principles, stands out as the great century, which built up the rights of people and Parliament as against the Crown, and circumscribed the legal and discretionary powers of the sovereign. The eighteenth century saw the gradual establishment, at first unnoticed and unchallenged, then fiercely and hotly disputed (but without any express alteration of the Statute Book), of the absolute, political, and administrative supremacy of Parliament—a supremacy finally secured by the victory of the governing classes over the remaining prerogatives and personal influence of the King. This end was reached, it may be repeated, neither by changes in the law, nor by the express enactment of a new code to regulate the division of power between King and Parliament, but by the gradual creation through Parliamentary action of Parliamentary precedents, which made it impossible for the King to act against the will of Parliament, and at last substantially reduced, though they could not completely destroy, his personal influence over members. So that in the course of two centuries the English constitution was revolutionised almost without the help of legislation. No new mechanism was invented, but new masters and new functions were assigned to the old; new meanings were given to the forms, and a new spirit breathed into the principles, of the past.

The seventeenth and eighteenth centuries compared.

The circumstance that the two first kings of the Hanoverian House were strangers to English affairs and society gave an almost unlimited control of administration to the Parliamentary leaders, and so hastened the flow and deepened the channel of the currents of political development. Then came the losing battle, long and obstinately

waged by George III. against the omnipotence of Parliament, followed by the years of decrepitude and imbecility in which the Crown was robbed of all that he had fought for. And so the great result of the inner movements of politics in eighteenth-century England is the building up of that system of government which has ever since been honoured and imitated—how often, alas, with small knowledge of its essence —in civilised Europe and America as the πολιτεία κατ' ἐξοχήν, the perfection of a constitutional system, Parliamentary government.

It is not our purpose to do more than suggest what an influence this mighty process of development, to which the catchword of "Parliamentary government" gives but a slight clue, has exercised upon the diverse tendencies of political and social life in England. Nor can we make any close inquiry into the question of the legal and practical changes introduced by Parliamentarism into the relations previously subsisting between Parliament and the Crown, in regard to legislation. Suffice it that for practical purposes the full and exclusive competence of Parliament as the real legislator was already established at the beginning of the eighteenth century. The Bill of Rights (1689) laid it down that the King had no right to dispense with a law in particular cases. It had already been held for a century at common law that royal proclamation or ordinance could not amend or repeal a statute of the legislature.[1] The unrestrained dominion of law, together with the sole right of Parliament to make it and unmake it, forms the hinge of the English constitution. But the door must be distinguished from the hinge, and Parliamentary government from the doctrine on which it swings. If the change in the relations between King and Parliament has not affected the formalities of legislation, there has been an organic transformation in the parts they respectively play. There has been a real change in the manner and the spirit of legislation. Parliamentary government means responsible government. Its

[1] Cf. Stubbs, *Constit. Hist.* p. 615 *sq.*, with his criticism of the single and shortlived exception to that principle, the Statute of Proclamations (31 Henry VIII. c. 8), one of the most curious phenomena of English constitutional history.

character is summed up in the principle that the King cannot himself carry on the business of State, and cannot lawfully act except through organs responsible to Parliament. The old sixteenth and seventeenth century struggles against the King's prerogative were ended by the accession of William III. and the passing of the Bill of Rights. The astounding changes which the eighteenth century brought about in the relations between Parliament and the Crown were effected, it may be repeated, not by statute but by precedent; and the political conventions silently established in the course of that century had the effect of denuding the King and his personal following of their power, and most of their influence, without impairing in the slightest degree the legal position of the Crown or the Privy Council.

Equally complete was the change brought about during this period in the executive and judicial functions of the Crown. Here too new principles were woven into the spirit of the constitution, for the most part, by Parliamentary understandings[1] which seldom left their mark upon the Statute Book, but also, though to a much smaller extent, by the decisions of the Law Courts.

All this intricate development which changed the whole inner structure of English life is, as it were, concentrated and summed up in the Cabinet—an institution never defined by, or known to English law, yet exerting and monopolising those executive powers which, in lawyer's language, still radiate from the King.

[1] Cf. Dicey's *Law of the Constitution*, pp. 340-394: "The Cabinet is collectively responsible to Parliament for carrying on the Government," and "The leaders of the party which has a majority in the House of Commons have a right to govern the country," are examples of these conventions or constitutional understandings. Cf. Freeman, *The Growth of the English Constitution*, 3rd ed. 1898, p. 111 *sq.*

In his *Life of Walpole*, p. 143, Mr. Morley writes down "the two main principles of the modern system" as "first, that the chief adviser of the Crown chooses his colleagues; and next, that a Cabinet depends upon a majority in the House of Commons."

The ideas thus conveyed have never received the sanction of a court of law; there is not even an authoritative formula for expressing them; yet they have the full force of constitutional laws because they are backed by the omnipotence of Parliament. We may perhaps add to what has been so well said by Professor Dicey, that these understandings which dispense with the Statute Book express the absolutism of Parliament just as the powers of the King to alter the law by ordinance expressed absolute monarchy.

But our subject again warns us not to go further in pursuing the details of this deeply interesting constitutional process. We might have asked how the idea of an executive responsible to Parliament sprang into existence, how it developed, partly by conscious effort, partly by the force of circumstances, into a logical system, how the old functions of the Crown have been connected together into a complete mechanism, which covers the whole province of public administration, and lastly how, despite the rigid maintenance of historical exteriors, a total change in the political character of the functionaries who inhabit these ancient buildings has brought about by continuous action a corresponding change in the civil functions, and in the whole political structure of administration.

But this process has a counterpart which forms a proper object of elucidation in the present inquiry; and that is the mode in which the historical organisation of the judiciary and of the administrative departments has been influenced by the rise of Parliamentarism, and of a Ministry responsible to Parliament. Accordingly, our next task will be to describe the principal features of the English administrative system in its earlier phases.

CHAPTER II

A FUNDAMENTAL ANTITHESIS

A FUNDAMENTAL antithesis between centralisation and "autonomous" decentralisation runs through the whole history of English government and its organisation. It is an antithesis that underlies every polity, but especially that of England, where the origin and building up of the nation give it an unparalleled importance. Indeed, among the primary causes which have governed the process of differentiating the early legal notions and institutions of the nation this conflict plays a leading part.

An antithesis of administration.

Let us first make sure precisely what the antithesis means, lest such a word as "autonomy" should lead to a misunderstanding. It does not refer to the struggle between the Anglo-Saxon kingdom and its semi-autonomous parts, nor to its modern analogy, the Home Rule movement, which has come into prominence since the Union of Great Britain and Ireland and is waged with varying zeal by Ireland, Scotland, and even Wales as against "the predominant partner."

The loose connection of the Anglo-Saxon earldoms under the suzerainty of the King undoubtedly encouraged federal tendencies within the realm of England; and the first period of the Norman kingdom, with its racial antipathies and feudal struggles, was troubled by this conflict between the English State as a whole represented by the kingly power and the political individuality of its parts. The process of fusing the three independent sovereignties into the United Kingdom of Great Britain and Ireland is still unfinished. But all this is outside our subject. We begin at a point where

the English State is already firmly conscious of its unity, a consciousness not impaired by the strong movement for local autonomy which, beginning in the eighteenth century, has made good so much ground during the last seventy years. So that the process with which we are concerned is not directed against the State. Our antithesis presupposes the solidarity of the State, and grows out of a full recognition of that solidarity. With the progress of national civilisation, rudimentary institutions receive a twofold development. They are differentiated on the one side into local subdivisions; on the other side they are unified into higher forms of State organism. From the very beginning of English history the contrast finds expression in the conflict between a powerful unifying monarchy, with the whole force of the executive behind it, and a strong local feeling which clung to what remained of a territorial organisation corresponding partly to the Saxon earldoms, partly to the counties into which they were split under pressure of the kingly power.[1] The double movement of government from and to the centre found its first monumental expression in the provisions of the Magna Charta (1215 A.D.), which require that jurisdiction shall no longer follow the King's court, but shall have a fixed court; that Judges shall travel throughout the country to hold Assizes; and that fines and penalties imposed for offences against the peace shall in all cases be assessed "by honest men of the neighbourhood sworn to that purpose."[2]

Its early history.

The whole remaining period in the development of the Anglo-Norman State is occupied by an attempt to bridge over the chasm, which divided the local instincts of the governed from the centralising policy of the Government, by changing the Norman organisation of the kingdom into one more in conformity with the territorial patriotism of the shires or counties. Though it is unnecessary to enter at length into the obscurities which shroud the constitutional history of this period, the permanent consequences of its

[1] For what follows, cf. Stubbs's *Constitutional History*, i., chapters ix.-xiii.; ii., chapter xv.; and especially pp. 290-298, 337, 365, 407, 418, 478, 585; ii. pp. 218-230.

[2] "Per sacramentum proborum hominum de visneto."

struggles may, nevertheless, be indicated with precision, for they are to be found in the new system created by the reforming genius of Edward III. (1327-1377). This system was a compromise between two excesses — the centralising tendencies of the Norman tradition and the obstinate provincialism of the Anglo-Saxon. The main outlines of the compromise are easily discerned. The figure of the Sheriff as a Crown Officer directly responsible to the King for the government of each county retires to make way for the new institution of Justices of the Peace, who are persons appointed by the State to carry out certain of its precepts and generally "to keep the peace."[1] From this time forward the preservation of the peace, the punishment of offenders against the laws for its maintenance, and the control of police are all functions pertaining to these magistrates. They are defined as men holding land in the county nominated to that office by the King. A certain number of them must be learned in the law. For certain purposes a quorum was required. In their quarterly sittings (Quarter Sessions) they had the assistance of a jury and exercised a criminal jurisdiction concurrent with that which the King's Judges exercised when on circuit. By the side of these powers the Justices eventually developed an independent jurisdiction of a summary character in virtue of which they punished smaller offences without recourse to a jury.[2] Under Edward III. the authority of this new office, introduced in the first year of his reign, was greatly extended. The Justices were even entrusted with the carrying out of the statutes of labourers,[3] the first great instance of administrative legislation in mediæval England. As in all other modern States, so in England public administration, beginning with the bare idea of police, gradually widened and deepened

The Justices of the Peace.

[1] 1 Edw. III. st. 2, c. 16, which provided that in every county good men and lawful should be assigned to keep the peace. 4 Edw. III. c. 2; 18 Edw. III. st. 2, c. 2; 34 Edw. III. c. 1.

[2] Cf. Paley's *Law and Practice of Summary Jurisdiction*, 7th ed., 1882, pp. 5-12. In the eighteenth century the summary jurisdiction of justices became extensive. For its exercise in the sixteenth and seventeenth centuries see Lambarde's *Eirenarcha*.

[3] 23 Edw. III. st. 2. Amended by 25 Edw. III. st. 2, cc. 1, 2, and many later statutes.

its preventive activities to meet the growing and diversifying requirements of economic and social development. And so the Justices of the Peace, originally instituted solely to superintend police, came to be recognised by the English Crown as the first and only local organs of its executive.[1] Along with this institution were erected three great principles of English administration which still stand.

1. Henceforward the counties and the towns taken out of them by charters of incorporation were recognised by constitutional law as the only territorial divisions of the kingdom. Every attempt to subdivide the country for the administrative purpose of the kingly power and its central departments without reference to this historical classification was regarded from that time forward as an attack upon the constitution.

2. The qualifications for executing public authority in these districts were landed estate in the particular county for a county Justice and for a borough Justice membership of a municipal corporation. Necessary outlay and expenditure might be made good; but practice, confirmed by a statute of the sixteenth century, has refused to attach a salary to an appointment which confers so honourable a distinction. That the office is (as we have said) a compromise appears from two of its incidents. First, a Justice of the Peace must be a man of the county or town. This was a concession to local spirit. Secondly, the appointment is made by the Crown. This secured the central control of the State over local government. Thus it was decided that, for the future, local administration and jurisdiction in England should be entrusted, not to official delegates of the Crown, sent like the Vicecomes from the centre of the State to its circumference, but to landed gentry or enfranchised burgesses living in the locality and only appointed by the central authority.

3. A third point to be noted in this institution is the judicial character of the functionaries to whom local administration was entrusted. That fact was equivalent to a declaration that all local administration is jurisdiction—that is to say, the interpretation and execution of laws. Justices

[1] Cf. Gneist, *Verfassungsgeschichte*, s. 298, for the early history of the office of Justice of the Peace.

of the Peace were appointed to put an end to the rule of lawlessness by enforcing laws for preserving the peace and by employing their delegated powers for the punishment of offenders; and the institution has been continued in order to ensure the effective maintenance of all the laws and ordinances which form the sphere of a Justice's duties and activities. A Justice of the Peace is appointed by Commission—that is to say, by a mandate from the King conferring jurisdiction. So far, the position of Justices of the Peace resembles that of Judges sent out on circuit from the Curia Regis to hold the Assizes. In both cases the Commission is a mandate from the King binding its recipients to inquire into, hear, and determine and punish crimes and offences. But this mandate does not stand alone. Another in the shape of a writ of *certiorari* may be issued by the King to remove indictments from any Court of Assizes or Sessions to the King's Bench—now the King's Bench Division of the High Court of Justice. This writ may be granted at the prayer of an aggrieved person to the King, *ut certiorari faciat*, to order another to "certify," *i.e.* return the records of a case. It has been developed from the common right of a party injured by the orders of Justices to appeal to the King.[1] But the King—that is to say, the High Court—has discretion to refuse to grant the prayer as well as discretion to issue the writ on his own initiative. So that the *certiorari* is also an early example of the disciplinary control retained by the King and his Council over all local officers, whether Judges on circuit or Justices of the Peace. All commissions are granted *durante bene placito regis* (during the King's pleasure) or *quamdiu bene gesserint* (during good behaviour), and are therefore always revocable.[2] The mere fact that a Justice was liable to dismissal subordinated local authorities to the central government. It would be a mistake to suppose that the Justices of the Peace were purely judicial functionaries

[1] No special legislation was required to authorise this writ, because all inferior courts of record are liable by their very constitution to have their proceedings removed for examination and review by the King's Bench Division (cf. Paley, *Summ. Jurisd.* p. 349).

[2] There is of course a great distinction between tenure during good behaviour and tenure during pleasure. Justices of the Peace hold their commission on the inferior tenure—during pleasure.

appointed to interpret and carry out the law. Undoubtedly they were bound to give effect not only to common and statutory law, but also to such ordinances and proclamations as the King in council had power to issue during this period. Already, however, the principles on which this power might be exercised had become unsettled, and even its existence had begun to be questioned in Parliament.

From still another point of view, the institution of Justices of the Peace is a significant landmark in the struggle against the centralising tendencies of Government. We have seen that the qualifications of Justices [1] were a legal recognition of the old division of the State into counties, and proved an irremovable obstacle to the Norman or Absolutist idea of governing the localities by emissaries from the centre.

The Justices and Feudal Jurisdictions.

Now we must add that this new magistracy performed another great service by enabling the English constitution to rid itself of feudalism a century earlier than the continent. It is true that a kind of social or practical feudalism survived owing to the continued predominance of the great landowner, and that this predominance—secured and preserved by the peculiar characteristics of the English law of real property—remains a modified but still considerable force in the politics and society of the present day. But of far more importance for the development of constitutional government was the rapid absorption by the Justices of feudal powers of jurisdiction and administration. And although this process did not involve the disappearance of venerable antiquities like the Manorial Courts and Courts Leet [2] till several centuries after its completion, still these were only meaningless survivals—shadowy forms deprived of their life and strength by the vigorous development of the new office. For not only were the Justices of the Peace exercising severally and jointly the whole of the preventive powers and police jurisdiction formerly wielded by the feudal courts, but the latter were

[1] By 13 R. II. c. 7 and 2 H. V. st. 2, c. 1, Justices shall be made *within the counties* of the most sufficient knights, esquires, and gentlemen of the land.

[2] On the survival of the Court Leet, which exercised a semi-feudal jurisdiction *nomine regis*, and of the purely feudal Manorial Court and Court Baron, see Garnier, *History of the Landed Interest*, i. 362-390; Pollock and Maitland, *History of English Law*, i. ch. iii. §§ 5-7.

deserted by the chief men of the townships and tithings of the old Hundred Moot, who were now bound to appear as the Grand Jury to make presentments at the Quarter Sessions of the Justices of the Peace. In this way the hundreds and their tithings, the oldest divisions of English local government, were subordinated to the Justices of the Peace; and the process which relieved English administration of feudalism was completed by the beginning of the fifteenth century.

The new magistracy was also of the utmost importance in municipal life. The English towns appear to have been from the first excepted from counties and exempted from county government; although to be sure their exemption from the interference of the Vicecomes only brought them into closer relations with the central authority, and especially with the King's Exchequer and Treasury. But in other respects the town constitutions followed the general line of development, and the burgesses obtained some sort of representative government by means of institutions like the Jury and Court Leet, which were originally intended solely for purposes of police. But this line of development was arrested in town as in country by the establishment of Justices of the Peace. True, some of the towns had a special Commission of the Peace under their own charters, which took them out of the jurisdiction of the County Justices; but in many cases they were subjected like county districts to the County Bench with the inevitable result that the growth of their representative assemblies was stunted, and their autonomy encroached upon by the county. But the full meaning of this concentration of powers in the Justice of the Peace, begun by Edward III., and rapidly completed by his immediate successors, can only be understood in its relation to the policy of Parliament.[1]

The towns.

The growth of Parliament, that greatest of all the constitu-

[1] Though Parliament of course was of earlier origin, it only took definite shape, and began to assert a fundamental authority, in the period following the institution of Justices of the Peace. For what follows, see Stubbs, ii. pp. 248, 599, on the earliest powers of Parliament. On the approval of new laws in the shire moots before the existence of Parliament, see the same at pp. 257-258 with the passage there cited from Coke's *Inst.* iv. p. 26; cf. further, Stubbs, i. p. 264, for the form (abolished by Parliament) under which local associations (*communitates*) approved of particular taxes and impositions.

tional phenomena known to the political history of modern times, cannot of course be sketched, however summarily. Here it is only needful to observe the way in which the creation and development of the House of Commons bore upon that fundamental antithesis which we have brought to notice in the organisation of English government. The right, regularly conceded from the reign of Edward I. onwards, of delegates from the counties and boroughs to sit with the great council of temporal barons and spiritual dignitaries, gradually gave these representatives of the commons a far-reaching influence in the imposition of taxes and the making of laws, and as a natural consequence in the general government of the country, so that they became one of the most active factors in the building up of that organisation, which has united the central and local authorities of England. The House of Commons, composed as it was of delegates from counties and towns, constituted the strongest possible recognition of the old territorial divisions for judicial, military, and financial purposes. It was almost like a House of confederated states, which had been unified and incorporated into one body by the action of plenipotentiaries from each member, in such a manner that its existence, far from being threatened by the multitudes of conflicting local interests, was actually dependent upon them. By acting for all it secured for each what could only be obtained by combination, namely, an influential voice in the conduct by the King and his Council of the affairs of the associated communities. As time went on, new rights were acquired; from the original right of granting money, and presenting petitions to the King, legislative powers were developed. The steps of the advance need not be detailed; but even the general development of Parliament is of the utmost importance to our subject, because it provided every local division, whether county or town, with an open door through which to bring its local interests and grievances directly before the central authority.[1] And this new privilege

Parliament and Local Government.

[1] Cf. Professor Maitland's observations in his valuable introduction to the "Memoranda of the Parliament of 1305" (Rolls Series) upon the importance of the commoners sent by boroughs and shires respectively to the King's Council of that year, and upon the petitions relating to administrative as well as judicial affairs.

was of all the greater value, because each locality had one or more representatives in the central authority which it approached, and was therefore enabled to secure a sympathetic consideration for its expressed wishes. The members of the House of Commons meanwhile acting together though they represented distinct divisions of the country, and progressing by slow but simultaneous steps, were acquiring the double power of legislating—first, by Public General Statutes for the common interests of the community; secondly, by Private or Local Statutes for the special and peculiar needs of particular localities.[1] The two functions have the same legal and historical origin in the common right of the local gathering and the Parliamentary assembly to present petitions to the central government as personified in the King. In either case, a favourable reply took the form of a written law; for by written law the King in Parliament invariably prescribed for the needs both of his kingdom, as a whole, and of its component parts. As the activity of the State intensified, the energy of Parliament grew in both directions, until from the sixteenth century onward, when its procedure had become regularised, the results of its work always appeared in the form of a statute, public or private. To sum up the full results in all their bearings is scarcely possible, but they amount at least to a principle which makes one of the corner stones of the constitution. Any new law that is to have binding force upon citizens, whether its application be to the whole State, or to a particular district only, must have received the sanction of Parliament. In other words, it must be in statutory form, and it can only be in statutory form, if it has passed through all the requisite stages by which a Bill is turned into an Act. Thus, by exercising and developing the right of petition to its utmost extent, and by preserving at the same time the old local divisions of the country as the units of administration, English genius was able to provide for local requirements in the form of statutes, and so to keep under the control of Parliament what is in continental states an undisputed preserve of administrative law, and of the departmental activities of the central government.

[1] On the rise and development of Private Bill Legislation, see Clifford's *History of Private Bill Legislation*, vol. i. pp. 267-490; Stubbs, iii. pp. 443, 469.

It will be worth while to pause a moment here for review. We have seen how, after the Norman Conquest, the government of England was first centralised and unified in the kingly power, and then again—as regarded the maintenance of the peace and administration of the law—decentralised and localised by the institution of Justices of the Peace, a striking recognition of local patriotism. We have also seen how Parliament, as the connecting link of local communities, gave them a direct influence upon legislation and the central government, and how (independent from the first) it constituted itself into a new central organ for the satisfaction of local needs, and the creation of the local machinery of government, and presently asserted its superiority over the officials of the Crown.

These two institutions, Magistracy and Parliament, were closely related, if only through the identity of the classes from which they were recruited. From the knights of the shires and the burghers of the towns were appointed Justices of the Peace to carry out the law in county and borough; and from the same classes of society and from the same communities representatives were elected to legislate for the nation, and for the communities into which it was divided. Thus they acted and reacted upon one another. As the powers of Parliament extended, the volume of public and private Bill legislation grew. That again increased the functions and powers of the local authorities appointed for carrying out such legislation—in short, of the Justices of the Peace.

In the meantime a development was also taking place in the departmental organs of the central government. The earliest and elementary form of the executive is the King's Council (Curia or Concilium Regis). When the Great Council of the Realm (Magnum Concilium) developed into the House of Lords, the King's Council took shape as the Continual or Privy Council.[1] As

Development of the central government.

[1] Cf. A. V. Dicey's *History of the Privy Council*, 1887; Hearn, *op. cit.* pp. 288-319; and Palgrave, *An Essay upon the Original Authority of the King's Council* (1834). The titles *Consilium ordinarium* and Legal Council are not warranted by records as Palgrave states (p. 20). In his introduction to the *Records of the Parliament of Westminster of* 1305, Professor Maitland expresses grave doubts as to whether a sharp line can be drawn between different councils of the Crown and Parliament in the time of Edward I. Cf. also Pike's *Constitutional History of the House of Lords* (London, 1894).

the Courts of Law came from the Magnum Concilium, so there sprang later out of the Continual Council a number of Central Boards, one of which, having the control of finance, branched off from the other central departments under the name of the Court of Exchequer.

Without following out the details of this process of differentiation, we may affirm that despite the vesting of particular functions of the Crown in particular Ministers, the formal unity of the central executive was preserved in the formal unity of the Privy Council, whose members included the Lord Chancellor and the holders of most of the great offices of State. Our present purpose leads us to consider in brief outline the relations first between the executive thus embodied and local administration; and secondly, between the executive and Parliament; and to trace those relationships down to the close of the seventeenth century. Our preliminary historical survey will then be complete; for it is necessary to avoid details in order to give prominence to the larger movements and decisive turning-points in the earlier history of the constitution. To begin with a remark of general application, it may be affirmed that the power of the central executive, though it varied according to the capacity of the reigning King, did on the whole decline for some time before that of the Justices, who represented the locality and its landed interests in administration, as well as before the growing strength of Parliament which drew local bodies together and united the landed gentry. With the fifteenth century, indeed, ends a period of what is rightly called the premature supremacy of Parliament, a period which is at the same time characterised by a marked slackening of the connections between central and local government. The first result was produced by the perpetual wars waged by the kings of England on the Continent, and by the scarcity of money thereby brought about in the Royal Exchequer, which enabled the House of Commons to play upon the foreign interests of the King, and obtain from him concessions of legislative powers and administrative control in return for its own grants of supplies. Indeed, Parliament was already seeking to call in question the right of the King to nominate his executive, and so to extend its influence into a sphere of hitherto unlimited prerogative. It was during the Lancastrian

régime that laws were first expressed to be made not merely with the advice and consent but by the authority of Parliament. To the same period belongs the first attempt of the Commons to get rid of officers of the Crown by impeachment.[1] But these symptoms of independence disappeared into the background when the Tudor dynasty with its able, determined, and confident rulers was firmly seated on the throne. Then came a return to personal rule; and the prerogative of the Crown encroached upon Parliament, until in the long reign of Elizabeth the actual, or at least the potential, authority of the central government attained in a certain sense its utmost limits, and rolled back the waves of Parliamentary rule.

Centralising policy of the Tudors.

The same movement can be plainly seen in the relations between the central and provincial organs of local government. We have observed that the office of Justice of the Peace was from the first doubly subordinated to the Crown—by the creation of a right of complaint or appeal, and by the liability of a Justice to be dismissed at the King's pleasure. Here, again, while there were some premature attempts in the fifteenth century to weaken this control, we find that the accession of the Tudors was followed by a sudden and sharp return to the older practice. Proof may be found in statutes of Henry VII. and Henry VIII., which declared that there having been in late years remissness in the central control of local jurisdictions, it was now urgently necessary for the furthering of justice and the commonweal strictly to enforce the same with the approval of Parliament and public opinion. But this movement was much more than a mere return to the older conditions. The supervision exercised by the Privy Council over magisterial activities not only increased in rigour, but was also extended beyond its former limits, more especially by the Star Chamber, a judicial committee formed for that very purpose out of the Privy Council.[2] In fact, this growth in the functions and activities of central administration is seen at its full proportions in the efforts made during the Tudor period to

[1] Stubbs, vol. iii. chap. xvii., and especially pp. 652-654.

[2] Cf. st. 3, Henry VII. c. 1; Gneist, *Das Englische Verwaltungsrecht*, i. pp. 480, 511-529; Dicey, *Privy Council*, pp. 80-90; Palgrave's *King's Council*, pp. 101-108; Leonard, *Early History of English Poor Relief* (1900), chaps. iv.-vii.

reorganise the body in which those functions vested. In the reign of Henry VIII. the Privy Council was reorganised with a view to its increasing work, and the order of precedence among its chief members was fixed. At the same time standing orders were drawn up to regulate its proceedings; and in the reign of Edward VI. these were revised. But most significant of all is the attempt to introduce a system of local government in direct defiance of the old by creating as provincial authorities, with judicial powers, functionaries appointed by the Privy Council, such as the Councils and Courts of the North, and of the marches of Wales, of Lancaster, and the Court of Exchequer of the County Palatine of Chester. These examples suffice to show that Government was becoming centralised in an excessive degree, and that the process, however much it may temporarily have been approved by people and Parliament, was threatening to root up those primary conceptions and fundamental principles which underlie the English constitution.

The Elizabethan Poor Laws.

This tendency to create a strong system of government from above achieved the more importance by virtue of a process of development which took effect in the smallest subdivision of the hierarchy of local government. Besides the deep political and economic consequences which flowed from Henry the Eighth's confiscation of the monasteries and the creation of a State Church, the Reformation also worked directly upon the inner organisation of the State. In England, as on the Continent, the relief of the poor had been the duty of the Church; and although the increasing inefficiency of the Church in the performance of that duty had already necessitated a measure of State intervention, it is yet true that the transition of poor relief from a religious to a civil function was one of the fruits of the Reformation. The problem was undertaken and solved with all the thoroughness and vigour of Elizabethan statesmanship. The care of the poor was treated as a national duty, but as a local burden to be undertaken separately by each local unit; and hence it was that the parish—the smallest local division of the ecclesiastical organisation of the country—made its appearance as a civil unit. The original units of local government (usually called tithings or townships) were merely subdivisions of a "hundred" and administrative districts of a county, the growth

of manorial courts followed by two centuries of magisterial rule having deprived them of their territorial basis and real meaning. And so it came about that village life and its needs had become associated with the Church and the parson; and the functions of each church being bounded by its parish, the ecclesiastical parish emerged as the real unit of local activities and interests, whether it corresponded with the civil township or not. All the inhabitants belonging to the church met in the parish assembly, elected parishioners as churchwardens, and transacted parochial business through the churchwardens and the parson. These were bound duly to collect contributions for defraying the cost of divine service and for the maintenance of the structure of the church—contributions voluntary in their origin, out of which there slowly developed the church rate, the oldest form of local taxation in England.[1] Finding this old organisation ready to hand, our Elizabethan legislators built upon it the new organisation which was required to perform the new task now devolving upon the State. By the famous statute of 1601[2] the parish was made the unit for poor law purposes, the duty of caring for the poor was attached to the office of churchwarden; special overseers of the poor were appointed in addition, and finally, to cover the cost of maintaining the poor, a local tax entitled the poor rate was instituted.[3] Like the church rate (by usage then long established) the poor rate was imposed upon every householder within the parish, and if the parish were unable to support the burden, supplementary contributions might be raised from other parishes in the same hundred.[4]

[1] On the rise of the parish, cf. Maitland and Pollock, *History of the English Law*, i. pp. 612-614. On the Church Rate of Cannan, *History of Local Rates*, pp. 14-16 *et al.*; and Gooling *v.* Veley (1853), *Clark's House of Lords Cases*, vol. iv. p. 768 *sqq.*

[2] 43 Eliz. c. 2.

[3] This part of the statute, however, is not much more than a re-enactment of 39 Eliz. c. 3.

[4] See 43 Eliz. c. 2, sec. 3. "If the said Justices of Peace do perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums of money for the purposes aforesaid, that then the said two Justices shall and may tax, rate, and assess as aforesaid any other of other parishes, or out of any parish within the hundred where the said parish is, to pay such sum and sums of money to the churchwardens and overseers of the said poor parish for the said purposes as the said Justices shall think fit" (cf. the Equalisation of Rates London Act for the principle; and Burns's *Justice of the Peace* (10th ed.), vol. iii. pp. 425, 426). Compulsory Church Rates were abolished in 1868 (31 and 32 Vict. c. 109).

Local taxation.

The rate, or assessment, was to be made according to the measure of each man's ability. But the difficulty was to obtain a definite standard of measurement. The statute provided in terms for the "taxation of every inhabitant" in the parish, as well as of the parson, vicar, and of every occupier of lands, houses, tithes impropriate, or propriations of tithes, coal mines, or saleable underwoods. Shortly after the passing of the statute, the Judges of Assize declared that the assessments "ought to be made according to the visible estate of the inhabitants both real and personal." Thus the standard of ability, or rather of rateability, was decided (in accordance with the obvious intention of the statute) to be *visible estate*. To avoid the mischief of a local inquisition into incomes was no doubt the aim of the legislature; and in accordance with this principle stock in trade was eventually exempted from valuation for rating purposes,[1] so that "visible property" for rating purposes practically came to mean real property.

Thus was laid the foundation stone upon which is built the whole structure of local taxation in England. Local expenditure is still defrayed by rates, rates are based upon the poor rate, and the poor rate is still governed by the principle laid down in this unrepealed statute of Elizabeth. It is not too much to say that there are few legislative achievements which can compare for simple grandeur and constructive foresight with the Poor Relief Act of 1601.

Every advance of civilisation is expressed in terms of common action, and as the work of the community increases the sphere of administration widens. And we need not be astonished if in England, the home of natural progress both in law and politics, all local business of a public character that involved expenditure—and much has arisen during the last three centuries — should have been tacked on to the organisation which was created for fulfilling the first social duty of a modern state, the relief of pauperism. We need not wonder that the financial machinery set up to dispose of the first burden was utilised to dispose of the remainder. The marvel is that a measure could have proved so adaptable. The new poor law authority of the parish had to be re-

[1] By a temporary Act which has been annually renewed since 1841.

conciled, however, first of all with the old government of the counties. In a word, the overseers had to be fitted in with the Justices of the Peace. This was done by subordinating the new authorities to the old. Not only were the overseers nominated by the Justices, but the whole of their administrative work was placed under magisterial supervision. Every rate and every act of poor relief and settlement[1] was made or sanctioned by order of Justices. Before the end of Queen Elizabeth's reign the sphere of this parochial government had been extended to the making and mending of roads and to the maintenance of bridges. Poor relief and police were the substantive needs of a locality; and the conjunction of overseers with Justices of the Peace was the organisation devised by the legislature to meet these needs. As fresh needs arose fresh attributes or functions were attached; but the authorities remained intact for more than two centuries, and were even then capable of being reformed and developed for further work.[2]

Feudalism.

In connection with this new system established by the Tudors stands the deliberate completion of the process of defeudalising local government—a process begun by Edward III. and strenuously continued under his successors. A great accumulation of magisterial and administrative business was passed over to the Justices by a deliberate restriction of the more or less feudal powers of the Court Leets. The participation of the freeholders in these courts and the expression they provided for the idea of local autonomy was too plainly opposed to Tudor policy, the creation of a unified and organised administration subservient to the will of the King. A great feudal lord of the Crown found small satisfaction for the loss of his local Courts of Jurisdiction in the seat that was offered him on the County Bench!

[1] The struggles between parishes (and later between Unions) in regard to the settlement of paupers form an important part of the jurisdiction of Petty and Quarter Sessions.

[2] The history of the Poor Rate and of the older local taxes may be found in Mr. Cannan's *History of Local Rates in England*. Particularly noticeable in this brilliant and learned study is the proof that the Statute of 1601 is only the final codification of a two centuries' development of laws and customs. See also Royal Commission on Local Taxation, First Report, 1899.

A last and inseparable part of this new policy of the Tudors is the fateful change that was made in the constitution of towns, both as municipalities and as constituencies for Parliamentary elections. The municipal history of English towns is painful to read. Towards the middle of the fifteenth century the idea of a free town had been developed out of the Court Leet or freemen's assembly by numerous privileges and royal grants; and a real stride forward was taken when the towns by a money payment to the King began to purchase the right to elect one of their own burgesses as mayor in place of the King's bailiff, who had hitherto exercised a certain central control. During the two centuries which followed the institution of regular Parliaments this municipal right was exercised by the whole body of burgesses. In the reign of Henry VI. the Crown began to grant charters of incorporation, in order to improve the legal position of a town by making it a legal person with power to hold property and to sue and to be sued in its own name. A charter was conferred by grant; and the usual course was to convert the Leet Jury, a managing committee appointed by all the burghers to look after their common rights and property, into a body corporate. In 1466 the Court of Common Pleas held that the grant of a charter of incorporation must be implied to every town then in existence, whether such a charter were actually possessed or not.[1]

Municipal charters.

Tudor statecraft saw how to develop this doctrine by degrees in a manner utterly destructive of local democracy. In the sixteenth century many new charters were granted handing over town government to a narrow select body, which was supposed to personify the burgesses, and was also enabled to perpetuate itself by co-opting new members. Thus the general body of burgesses was excluded from all participation in municipal government. Then the courts, at that time subservient instruments of the Crown, evolved a legal theory that not only must all other towns be

Select bodies.

[1] Cf. Somers Vine, *The English Municipal Code*, p. 7. The principle of this decision was afterwards extended, and the charters of our early kings, which merely conferred the right of local self-government upon boroughs, were then construed as charters of incorporation.

regarded as corporations by prescription, but that in these also the municipal government and property was vested in the select body. Lastly, in a famous Elizabethan judgment, it was formally held and declared that all select bodies were competent to pass bye-laws for the government of the town, and that changes so introduced were binding upon the burgesses. In this way it came to pass that in almost every case the ordinary burgesses of a town were excluded from sharing in its government. A town had become a select body, and a select body was a close corporation. The members of this close corporation, the active burgesses, soon came to be distinguished from the passive and disfranchised populace by the title of Freemen. Thus municipal government was, generally speaking, handed over to a small group free from the control of the general body of inhabitants, and a door was opened wide for waste of municipal property, misuse of municipal office, and corruption of all parts of municipal government. In some towns all the members of the omnipotent select body became *ex-officio* Justices of the Peace, adding that dignity to the municipal offices they already held, and so uniting in their own persons every species of public authority. This process of development (or degeneration), so paradoxical to the student of Common Law, only becomes intelligible if one keeps in mind the policy of which it was the outcome,—that policy so earnestly pursued by the Tudors of degrading Parliament into a mere instrument for recording and registering the Royal Will. In the reign of Elizabeth, Parliament began slowly to recover its strength, and to reduce the excessive power and influence of the Crown; and this it was which induced the Crown to multiply charters, and to incorporate select bodies small enough to be susceptible to menaces or bribes, and likely therefore to elect as their representatives in Parliament the nominees of the Crown. The same consideration influenced subservient judges and led to the invention of the legal doctrines about incorporation, by which the mischief was still further extended. The exertions of the Crown were also facilitated by economic conditions. In the second half of the sixteenth century the industries of many English towns declined. This explains much; for decaying bodies may easily allow

Economic conditions.

political and municipal rights to slip out of their grasp; and speaking generally, English towns even before this time had lagged far behind those of Germany, the Low Countries, or France, both in commercial and social development. Until the end of the eighteenth century England remained an almost exclusively agricultural state. For hundreds of years raw wool was her chief article of export, and the home woollen manufacture attained no importance until the sixteenth century. With the exception of London and a few old seaports the English towns were almost entirely agricultural, at most small market towns serving the surrounding district. Not only were they under the social and political sway of the county families, but most of them were policed and administered by the County Bench. Without doubt the Tudor sovereigns entertained a further idea of placing the larger towns, like the counties, under the administration of close Benches of Magistrates appointed by the Crown who could be recruited from time to time from the ranks of the wealthier classes.[1]

The parish.

Changes very similar to those we have been describing in town government were overtaking, some at least, of the villages of rural England. In the thirteenth and fourteenth centuries, as has already been observed, a parochial organisation created primarily to meet the temporal needs of the Church had gradually become more and more concerned with the business of civil administration. Not that the parish was even in its origin a purely ecclesiastical district. As a rule, at least in the southern and more densely popu-

[1] For the earlier history of English town constitutions, see Gneist's *Self-Government*, p. 580; Stubbs, iii. 577-615; Maitland, *Township and Borough* (Cambridge, 1898); Pollock and Maitland, *History of English Law*, pp. 637-688; Somers Vine, *The English Municipal Institutions, their Growth and Development*, pp. 3-12. The first Charter of Incorporation seems to have been that granted to Kingston-on-Hull in 1439. On the decline of English towns and industries, see Froude, *History of England*, i. p. 8. It is not of course intended to give here an exhaustive list of authorities on the development of the law and constitutions of municipal boroughs in England. *Madox Firma Burgi* contains the views of tenth century scholars upon the legal history of towns in England; while the famous work of Merewether and Stephens gives the fullest history of unreformed corporations. For the development of the idea of incorporation reference must now be made to Professor Maitland's masterly introduction to his translation of Dr. Gierke's *Political Theories in the Middle Ages*. Cf. also Pike's remarks on the history of the Borough of Wells in his edition of the *Sixteenth Year-Book of Edward III.* (Rolls Series), 1896.

lated parts of England, the Church had adopted the old Anglo-Saxon township as the district of the parson or parish priest. So that the ecclesiastical unit was historically based upon the civil unit into which it was in its own turn to develop. By ancient usage, which had become universal in the thirteenth century, the parson or incumbent of the parish would lay the cost of maintaining the fabric and furniture of the Church upon the owners of land in the parish; and it became the general practice for the parson to summon from time to time all those interested in the matter to a parish meeting for the purpose of raising and duly apportioning the necessary expenses. No wonder that such a gathering presently extended the sphere of its activities.

The Vestry.

To this parish meeting—summoned by the parish priest not less than once a year in the vestry—came all members of the Church, men and women, rich and poor alike, to give aid and counsel in the common affairs of Church and neighbourhood, and, above all, to bring freewill offerings to support the service of the Church. Hence there was generally thrown upon all the *inhabitants* of a parish in the form of Church rate a burden similar to that which fell from the first upon its landed proprietors. Taxation carried with it representation, and it was the duty of the Vestry—for the gathering soon took its name from the place where it met—not only to lay the Church rate, but also to elect officers to look after the Church service. These officers were the sexton, the clerk, and the churchwardens. When the Reformation and the dissolution of the monasteries compelled the State to come to the relief of the poor, the parochial organisation was adapted, as we have seen, to Poor Law purposes; and the adaptation involved certain changes of great consequence. Undeniably the Vestry represented a very democratic type of local government. It was a council to look after parochial affairs, in whose discussions and resolutions every member took an equal part, under the chairmanship of the parson. Even the lord of the manor himself and his underlings were here on a par with the poorer members of the Christian community. The election and control of churchwardens and other officers was the chief business of the parish meeting or Vestry; but in the larger parishes public business was so

considerable and varied that it was soon felt necessary to form special committees for special purposes of administration, the most usual being Committees of Assessment, of Watch and Ward, and of Assistance. These committees were in themselves an infringement, small indeed but still perceptible, of the broad democratic principle of the Vestry, and seemed to threaten it with the same fate which had befallen the Common Councils of the boroughs. But they were only a half-way house, as it were, in the transition from the simple and complete democracy of a fully attended parish meeting to the complete and developed system of representative local government. Nor was the lot reserved for the village vestries altogether the same as that of the town councils, although in many places, with the aid of High Church bishops, who were averse to popular influences being brought to bear upon the affairs of the Church, the Select Vestry (a standing committee recruited by co-option) was substituted for the old democratic Common Law Vestry. Where this happened, the control of the inhabitants in Vestry assembled practically disappeared. The Bishops and the Courts of Law alike recognised these close bodies as most worthy and representative authorities for parishes. In the eighteenth century Select Vestries were set up by express Acts of Parliament, public and private, where new churches were to be built. And so after the beginning of the eighteenth century parishes were distinguished into two classes, those with Open Vestries—mostly the smaller parishes —which retained the ancient democratic type of constitution, and those with Select Vestries, which present a true parallel to the close corporations of the Tudors and Stuarts. Still it must never be forgotten that the principle of local autonomy and the idea of representative government never suffered in the country that general decay which overtook them in the towns,—a difference mainly due to the smaller interest taken by the central government in the former. Whereas, at the beginning of the nineteenth century there was scarcely a town corporation with a really representative council to be found anywhere in England, the parishes governed by Select Vestries remained comparatively few, and those few had been introduced mainly into the large manufacturing towns and the out-

Select Vestries.

growths of London. The majority of the country parishes kept their Open Vestries, although even in them, as we shall see later, government had fallen into a deplorable condition of decay.[1]

If all these points in the history of the Tudor period be collected and comprehensively surveyed, there will appear a plain and systematic policy on the part of the Crown which aims at setting up a new kind of local administration throughout the land, and one completely at variance with the true and ancient spirit of the constitution. The further the sphere of administration was withdrawn from legislation, and the more intensely local were the agencies for carrying out such laws as those for the relief of the poor, so much the more did the centralising bureaucracy of Henry VIII. and Elizabeth seek to strengthen its grip upon the inner life of the nation, running thereby into violent collision with a certain deep-rooted allegiance of the individual citizen to the unwritten law of local autonomy. As the monarchy marched farther along this road, it was setting at naught more and more national ideas and national institutions. This helps to explain why the Kings of the House of Stuart, who pressed the policy of the Tudors to its logical conclusions, stirred the country to its depths and drove their people into revolution. The creation of an established Church, with the King as its head, also played an important part; for it not only vastly increased the power of the Crown, but enabled the Stuarts to use the strengthened executive for religious purposes, and so sharpened and embittered the long-standing conflict between King and constitution that a collision became inevitable. But the struggle, though accentuated by religious intolerance, was in essence a legal one;[2] and its object was not to make a new constitution but to safeguard the old. So much is proved by the transient results of the Commonwealth, or at least of the

From Tudor to Stuart.

[1] For the history of parochial government see Gneist, *Self-Government*, pp. 653-683, where Toulmin Smith, the historian of parish law, is the authority mainly followed (cf. Toulmin Smith's *The Parish*).

[2] The point is expressed by Hearn as follows:—"In all our great constitutional struggles the question has been invariably argued on either side as a question of dry law. On such occasions large views of public policy have usually been put aside. It has been the uniform policy of our constitution to claim and assert our liberties as entailed inheritance, derived by us from our forefathers and to be transmitted to our posterity" (*The Government of England*, p. 6).

constitutional changes and experiments introduced by Cromwell and the Puritan party.

Incompetent, unconstitutional, and romanising, James II. accomplished his own ruin and paved the way for a constitutional monarchy founded not on hereditary or divine right, but on a contract with the people embodied in an Act of Parliament. With the advent of William of Orange the battle between absolute and constitutional government comes to an end, and a new system of politics arises, based upon the national idea of law. Monarchy is conceived as an authority strictly limited in initiative, and only finding expression in the legalised and regularised functions of the proper organs of its executive. From this time forward the idea of a constitutional monarchy—that is to say, a monarchy bound to act in accordance with laws and customs of the constitution—is firmly and irrevocably fixed. And it exerts a decisive influence upon the fortunes of that elemental conflict between central and local government from which we set out. In finding an answer to the great political question, whether the will of the King or the will of the people's representatives is to be law, England also found an answer to another question: Whether at all, and if so to what extent, by the side of Parliament and the courts of law a central authority personified in the King's Council should exercise an administrative control over the local organs of government? Supremacy of Parliament was the answer to the first question, which solved the problem of the second. The first great Act of the Parliament which triumphed over Charles I. was the abolition of the Star Chamber and of the creatures to whom it had delegated provincial jurisdiction. Thus the jurisdiction of the King in Council was quashed, every mode of avoiding the ordinary laws by appeal or complaint to the Privy Council was prohibited, and an end was put to central administrative control over local jurisdictions and local authorities. Nor did the government of the Restoration venture to modify the principle of the statute (16 Carol. I. c. 10). On the contrary, the principle was developed by substituting the exclusive jurisdiction of the High Court of King's Bench for that of the Privy Council in all questions of law arising out of the action of administrative bodies; and thus

The courts of law and local authorities.

the last gap in the English *ordo judiciorum* was filled up and the last opening closed by which administrative law might have entered into the constitution. The long established maxim that every servant of the King is accountable for his actions to an ordinary court of law was now fortified by the destruction of the extraordinary "concurrent jurisdiction" of the Privy Council, and by the removal, along with the Star Chamber, of its supervisory control of local authorities.

But these changes at the centre had positive as well as negative effects upon local government, for they led to an extension of magisterial jurisdiction which has made the office of Justice of the Peace the most peculiar and characteristic feature in the institutions of modern England. On the one hand, it was impracticable for High Courts to serve as the first Court of Appeal from the decisions of local authorities; on the other hand, it was impossible to declare that there should be no appeal from the orders and convictions of the Justices of the Peace; the difficulty was got over by creating an intervening jurisdiction. From the courts of first instance recourse was given to the Court of Quarter Sessions, which thus became the first Court of Appeal; and parties who wished to test their rights in a higher tribunal could usually remove the decisions of Quarter Sessions by writ of *certiorari* to the Court of King's Bench. Moreover, in cases of special difficulty the Petty Sessional Justices if they were in doubt, not about the facts but about the law, were allowed themselves to send a case in the form of "a special case" to the Court of King's Bench without consulting Quarter Sessions. But the creation of the new appellate tribunal proved a great factor in local government; for not only did it allow or disallow the regular business and simple decisions of the Petty Sessional Magistrates: it also discharged as court of first instance a number of important duties conferred upon it by Parliament. This institution, built up by the legislation of Charles II. and his successors, has given that complete legal and practical independence of central administration which has distinguished English local government since the beginning of the eighteenth century.[1]

Appeals from the Justices.

[1] For the abolition of the Star Chamber, see Dicey's *Privy Council*, p. 130. On the extension of the jurisdiction of the Court of King's Bench, and on the

Parliamentary boroughs.

Parliament having checkmated centralisation seems to have had little energy left to deal with the rest of the reactionary policy of the Stuarts. Cromwell, it is true, perceived that the chief cause of the misuse of the kingly power lay in the constitution of the House of Commons, more especially in the over-representation of corporate towns, and he set himself energetically against this evil in his constitutional experiments.[1] And even the servile Parliament of Charles II. protested so vehemently against the multiplication of Parliamentary boroughs by the issue of new writs, that the practice ceased from that time forward. But no protest was made against the corruption which was invading the spirit and practice of municipal government. Under Charles II. and James II. the pernicious municipal policy of the Crown reached a climax. By the Test and Corporation Acts, which disqualified Catholics and Nonconformists from municipal offices, the sphere of active citizenship was still further narrowed, and the "Select Bodies" became still more select and corrupt. In 1684 Charles II. forced a compliant Tory Parliament to frame a new constitution for the city of London, which deprived her of her ancient right of naming the sheriff and all other important officers. He further got the Parliament first to pass a legal farce, in virtue of which the Judges of Assize confiscated all town charters, and then to concoct new constitutions, which completely handed over the appointment of future town magistrates to the Crown. Two years later, when James II. wanted to summon a Parliament to carry out his Romanising schemes, Charles's illegalities were carried further. Special "Regulators" were appointed to form new select bodies in all the Parliamentary boroughs in order to secure the election of compliant members. If contemporary opinion may be trusted, this illegal and impolitic step contributed more than anything else to the

creation of the Appellate Civil Jurisdiction of Quarter Sessions, see Gneist's *Verfassungsgeschichte*, pp. 654-656 *sqq.*

[1] For Cromwell's Instrument of Government (1653), cf. Goldwin Smith, *The United Kingdom*, vol. i. pp. 655, 899. Cromwell was not only for doing away with the House of Lords, but also for extending the Parliamentary franchise to all freeholders and to all whose personal estate was worth more than £200. He sought to disfranchise the small "rotten" boroughs and to strengthen the representation of the counties.

Revolution, which soon afterwards occurred. But a century and a half was to pass before radical remedies were applied. Again and again the identification of the municipal with the Parliamentary franchise and of the corporation with the borough inclined English governments to the profitable practice of corruption.[1]

The victorious Parliament of William and Mary reversed the illegalities of James, but no real reform was undertaken to correct the abuses of the representative system. Town franchises were preserved with all their anomalies and confusion. After two centuries of growth Select Bodies received Parliamentary recognition, and the municipal was confirmed by the political oligarchy. The reason is not far to seek. The ruling classes having conquered, as they thought, the King had no wish to see the basis upon which their own rule rested extended, or the balance of constitutional power again altered. They had come into a King's inheritance and they intended to enjoy it.

Consequences of the Revolution.

And now we are already crossing the threshold of the epoch of Parliamentary government proper, in which the supremacy of Parliament over the kingly power proceeding from the "Glorious Revolution," and founded on the Bill of Rights (1689), and the Act of Settlement (1701), gradually grows, and at last becomes complete. The question we put to ourselves is already in full view, and even the answer is partly in sight.

The great political changes of the seventeenth century decided some of the issues in the conflict between central government and local autonomy, in that the administrative

[1] Cf. the learned history of *Municipal Corporations*, by Stephen and Merewether, quoted by Somers Vine, pp. 8, 9, and Bishop Burnet's *History of his own Time*, edition of 1833, vol. ii. p. 323 ; vol. iii. pp. 191, 899. Burnet blames the Stuarts, but still more the burgesses, for their loss of moral fibre, in that they never made any stout stand against the King's municipal policy, but tamely surrendered their rights : "It is certain, whatever might be said in law, there is no sort of theft or perjury more criminal than for a body of men, whom their neighbours have trusted with their concerns, to steal away their charters and affix their seal to such a deed, betraying in that their trust and their oaths. In former ages corporations were jealous of their privileges and customs to excess and superstition, so that it looked like a strange degeneracy, when all these were now delivered up, and this on design, to pack a parliament that might make way for a popish king" (vol. ii. p. 323).

control of the Privy Council was taken away, the decision of legal questions confined to Courts of Law, and the control of local government handed over to Quarter Sessions as the first and in most cases the final Court of Appeal. By these measures not only were the efforts after centralisation foiled, but an enormous impetus was given to decentralising tendencies already inherent in the constitution. Seemingly trivial changes in existing jurisdictions produced the conditions necessary for a further extension of local autonomy on the lines marked out by new social factors and new Parliamentary influences. Then comes the striking fact, already noticed as the characteristic of this constitutional era, that very few express or statutory changes accompanied the peaceful revolution which came over English government in the eighteenth century. Not law, but the usage of a series of party leaders has made the Parliamentary system. Precedents whose importance was often unnoticed at the time, conventions silently accepted, rules evolved from practice, gradually fixed the functions of the great organs of the executive, and created the marvellous structure now famed as the "venerable English constitution." And it was perfected almost unconsciously by statesmen who did not and could not realise the tremendous consequences of their work. A similar drama was being acted on the local stage. There it is true the progress was sensibly strengthened by Acts of Parliament; but at bottom the peculiar developments of local as well as of Parliamentary government in the eighteenth century were due not to legislation, but to interpretation, to the stamp set upon existing institutions by the governing classes. The two revolutions had set free Parliament and local authorities alike from kingly compulsion; and new social and political forces were let loose to develop unhindered. The change that came over them was in the spirit and substance, not in the form.

The eighteenth century.

When this process and the changes of local organisation it involved are passed before our eyes, three distinct and decisive movements can be discerned—

1. The formation of a ministry responsible to Parliament, as the only authority which may use prerogatives still in a formal sense appertaining to the King, and as the only

authority which may direct and guide central administration.

2. An increase in the volume of private Bill legislation—in other words, an increase in the administrative activity of Parliament.

3. The unlimited ascendency established by the landlord class in Parliament, and in public offices, and the effects of that ascendency upon the organisation and functions of local government.

Now, with regard to the first subject, the Cabinet[1] system is the greatest and most fruitful achievement of Parliamentary supremacy. Its rise is contemporaneous with the final disappearance of the Privy Council as a real organ of Government. A few steps in the process must be mentioned. Growth of the Cabinet.

With the abolition of the Star Chamber, the Privy Council lost one of its chief functions—the supervision of local government (by Privy Councillors). And although it retained the conduct of the remaining business of Government, it was only acting henceforth as the administrative agent of both King and Parliament.

The end of the Civil War was followed by a great outburst of activity on the part of the English government, not only in foreign politics, but also in trade, navigation, and colonial affairs;[2] and the volume of business soon proved too great for a body so unwieldy as the Privy Council. The difficulty had been felt even earlier, for Charles I. had formed a standing committee of Privy Councillors to advise on State affairs, all the most important business being reserved for this select body. This arrangement, which contrasts with the departmental method of dividing business according to subject-

[1] For the history of the Cabinet, cf. Hearn, *op. cit.* pp. 197-229; Dicey, *Privy Council*, p. 136 *sqq.* Cabinet is the smaller; ministry the larger word. A Cabinet Minister is one of the group of important ministers who attend the Cabinet Council. The Cabinet varies in size, but its tendency has been of late to increase, until, in the Government founded by Lord Salisbury in November 1900, it has reached the unprecedented number of twenty. We may safely say that the larger a Cabinet Council the smaller its importance and the more formal its proceedings.

[2] The Board of Trade and Plantations (Colonies) was created in the year 1695. But a Council for Trade and another Council for Foreign Plantations had been brought into existence in 1660.

matter, continued after the Restoration, partly as a conservative adaptation of old usage, but mainly because it was a practical necessity. Proposals for reform like those of Clarendon, which aimed at the creation of separate standing committees with bureaus, suffered shipwreck no less completely than did Temple's attempt to make the Privy Council as a whole participate in administration. The real work was always in the hands of a few, like the five who made up the Cabal[1] in Charles II.'s reign. But until the Revolution the King had a free choice among the various groups of peers and commoners. Then came a startling change. Not only was it more and more necessary that Parliament should trust the confidants of the King, but the Cabinet hitherto chosen at large was henceforth after a little period of uncertainty chosen only from the party predominant in Parliament, and after another short period of uncertainty the choice was narrowed to the party which could command a majority in the House of Commons. The frequent absence of William III., George I., and George II. from the country, and the small interest taken by the last-named two in its affairs, helped to establish another usage—the exclusion of the King from Cabinet Councils. A third principle, that the Cabinet is a political unit, so that its members stand or fall together, was of slower growth. Many decades after the other two had came into force, a dissenting member of the Cabinet reposing in the King's confidence would refuse to resign, and even oppose his own collcagues on the question at issue. But before the end of the sharp party struggles of George III.'s reign, the solidarity of the Cabinet, and, in a secondary degree, of the ministry had come to be recognised; and it followed as a practical consequence that the victory of the Opposition in the House of Commons upon any critical issue involved either a change of ministry or a dissolution. It was no longer even possible for a favourite of the Crown to form and carry on a ministry unsupported by a majority in the House of Commons; Parliamentary government is Party government.

[1] A nickname made up of initial letters—Clifford, Arlington, Buckingham, Ashley, and Lauderdale—which, "during some years," says Macaulay, "was popularly used as synonymous with Cabinet" (*History*, chap. ii.); "Cabinet," however, a word borrowed from the Italian, prevailed.

Without enlarging upon the English Cabinet, we have said enough to show that such a change in the governing organ must have been felt throughout the sphere of government. The work of the central administration of the King in council had passed completely into the hands of a body which, though undefined by law, was practically a committee of the House of Commons, or rather of the majority in the House of Commons for the time being.[1] Consequently, not Parliament only, but the governing party in Parliament got supremacy over the Crown along with the undiminished control and sole conduct of the whole administration, so far as it rested with the central government. It is true that such control was largely exercised under the form of statutes. But that fact does not destroy the purely administrative character that attaches to so much of the private and to some of the public Bill legislation.[2]

Parliament as administrator.

For whether the Cabinet is exercising the prerogative of the King by issuing an Order in Council, or is carrying on central administration by authority given through Acts of Parliament, Parliament always has the same right to criticise, amend, or reject. Parliament revises the work of its committee, the Cabinet; and if Parliament is dissatisfied

[1] Cf. Mr. John Morley's letter to the *Spectator*, 10th November 1900: "Of course, the degree of control actually exercised by the House of Commons in a given Parliament depends on the size of the majority, the boldness or the weight of a leading minister, and many other subtler things, and the tendency for some time past has unquestionably been towards lessening the direct authority of the House, and augmenting the power of the Cabinet; and an extremely interesting, important, and perhaps perilous tendency it is. Still, the vital fact remains that executive power now belongs to a Cabinet, and that Cabinet is nothing but a joint committee from the two Houses of Parliament, maintained in power at the will and pleasure of one of them. I do not forget a minister's power of dissolving; it is one of the things that give to our system its incomparable flexibility. But even this power, exerted as it was, for instance, by Lord Palmerston in the remarkable case of 1857, does not shake what is, after all, the obvious general truth as to our normal Parliamentary position, that a single House, sensitive as it may be to fluctuating impressions from outside, is yet in relation to control of the Executive the paramount organ of British government."

[2] The reason why the party system has not been carried into the Civil Service and local administration is partly, as Gneist says, that internal institutions are so firmly founded on law, but partly also that the two historical parties have been so little divided upon questions of internal administration.

with the conduct of affairs it can remove its Committee by refusing supplies or by passing a vote of no confidence.

Thus the central authority, one of the great factors of government, was brought under the dominion of Parliament. There has never been anything more erroneous or more misleading than the theory invented by Montesquieu and adorned by the legal learning of Blackstone, that the English constitution was essentially a mixed constitution and founded, like the ideal Rome of Polybius, upon a balance of powers. At the time when Blackstone wrote, a close observer might have seen that to the long-established command of legislation Parliament had already added the command of the Executive. For the decisive element in government is not the work itself, but the will that drives and controls. And after the development of constitutional Cabinet government this will lie in Parliament alone. Even over justice the supremacy of Parliament had been asserted by the Act of 1701, so far at least that Judges of the High Court could be removed only by an address of both Houses. And the appointment and dismissal of the Justices of the Peace were theoretically controlled by Parliament, since the Lord Chancellor has always been a member of the Cabinet. Moreover, not only was the whole central government directly or indirectly under the control of Parliament, but private Bill legislation was proving in its hands a most effective instrument of local administration.

Private Bill legislation.

The foundations of England's industrial and commercial supremacy were laid in the eighteenth century. Manufactures made great headway, especially in districts where water power abounded. New towns sprang up, some of the old boroughs increased enormously in population, and great, if deplorable, changes in the conditions of the agricultural classes were brought about by the Enclosure Acts.[1] The increase of foreign commerce and shipping made it necessary to extend and improve the harbours; and the same causes, combined with an enlargement

[1] For the history of Enclosures and their relation to local government and rural life in England, cf. Ochenkowski, *Englands wirtschaftliche Entwicklung im Ausgange des Mittelalters*, 1879, pp. 1-48; Hasbach, *Die Englischen Landarbeiter in den letzen hundert Jahren*, 1894; Clifford, *History of Private Bill Legislation*, vol. i. pp. 13-28; Shaw Lefevre, *English Commons and Forests*.

of the home trade, led to the development of internal communication by canals and roads. All these needs and services required regulation and sanction. General needs were provided for by general statutes, but of far more importance for our subject are the Bills promoted in greater numbers from year to year by individuals, associations, companies, and local authorities for such purposes as those mentioned above. Who should test the propriety of these applications,[1] and to whom should the power of rejection or ratification belong? At a time when Parliament was gathering in its hands all the reins of government the answer could not be in doubt; it was not likely to surrender a power which it already possessed. In fact, it refused even to employ the Cabinet, preferring to deal with the subject directly and to keep the whole course of private Bill legislation in its own hands. Nor is it strange that Parliament should have jealously retained what was after all the correlative of the right of petition enjoyed by every individual citizen and every corporation. The consequences to English local government may be seen in thousands of local Acts, which form indeed the main part of private Bill legislation in the eighteenth century. And these were, it must be repeated, really Acts of administration proceeding from the highest administrative authority in the State. Parliament was (and still is) doing by legislation, and with all the guarantees of legal form, what would on the Continent at the present day fall to the provincial or central government, directed by the monarch or his immediate servants, without any control by the estates of the realm; and the decisions arrived at in the course of such royal administration would be almost entirely excluded from the jurisdiction or possible interference of the ordinary courts of law. But in England there is not only the guarantee afforded by the various formalities needful to the passing of a statute. For the purposes of private Bill legislation, Parliament has assumed a judicial as well as a legislative function. If a Bill for the satisfaction of local or individual needs touches or threatens to injure the rights and interests of others, those others may

[1] The promotion of a private Bill is an application to Parliament for a grant of powers to the promoters to do what they could not otherwise legally do. More will be said about this institution in Part VII. of Book II.

appear as parties interested and oppose by counter-petitions and arguments the Bill promoted and supported by the petitioners. The Bills are considered by select committees of both Houses of Parliament. There are fixed rules and a regular procedure. Witnesses are heard. Parties appear by counsel, who are usually members of a special branch of the profession called the Parliamentary Bar. Old decisions of Parliamentary Committees are quoted as "precedents" much in the same way that "cases" are cited in an ordinary court of law.

Such, then, in outline was the mighty revolution in the inner organisation of public life, whereby Parliament became practically the sole High Court and Supreme Council of local government at the very time when inner administration in the continental sense—that is to say, as a branch of State activity—was beginning. Government in the Middle Ages was mere police—a system of penal prohibitions. But something more positive was needed by society from the State, and gradually both the central and local authorities began to contribute to social and industrial problems, until at last, in the eighteenth century, a benevolent State overloaded the individual with a cargo of precepts and regulations too onerous and numerous to be useful or even tolerable. If the trial was in some ways more severe in England, she went through it earlier than most of the continental States, and her excess of government was due to the increasing activity not of the Crown and the officials but of Parliament. It was due, so to speak, to grandmotherly legislation, not to grandmotherly administration.

There is nothing wider or deeper in the English constitution than the principle that every exercise of power must be in accordance with law. This "rule of the supremacy of law," as Professor Dicey calls it, receives full expression when Government, in the modern sense of the word, with all its positive activities is simply part and parcel of the ordinary law of the land. So far as local government is concerned, this complete subjection of administration to law was secured first by the combination of both functions in the persons of the Justices; secondly, by the institution of private Bill legislation; and thirdly, by the institution of the Cabinet, which

placed the whole of officialdom under a committee responsible to Parliament.[1]

[1] On the rise of the system of private Bill legislation and the means by which Parliament became the chief administrative authority without departing from the legislative form, cf. Clifford, *op. cit.* i. 1-14, 27-29; ii. 255-290. The great theoretic importance of this function of Parliament has hitherto been neglected; even Professor Dicey, for example, in his happy contrast between the continental Droit Administratif and the English Rule of the Law seems not to bring out the full meaning of the latter because he treats his contrast principally from the standpoint of the protection afforded by the law to the individual as against the official. But private Bill legislation is a significant expression of the absolute dominion of common and statute law throughout the province of administration. But this important subject will be considered in more detail later. See Part VII. of Book II.

CHAPTER III

THE COMPLETION OF PARLIAMENTARY GOVERNMENT

THE completion of Parliamentary government necessarily involved changes of political structure, as it necessarily deranged the relations between central and local government. We have seen that in the course of the seventeenth century the Justices of the Peace had been legally and practically released from administrative subordination to the Privy Council. The formation of Quarter Sessions into a Court of Appeal from parochial and petty sessional Acts and Orders, the extension of the jurisdiction of the King's Bench by making it a Court of Appeal from administrative authorities, and finally, the increasing volume of "county business" assigned to Justices of the Peace in Quarter Sessions, all express the full maturity of administrative autonomy at least in the counties and in those towns which were allowed to hold Quarter Sessions of their own. For legal purposes Petty and Quarter Sessions were now firmly fitted into the judicial system of the country. But as regards administration in the technical sense, the local peculiarities of these Benches or Courts were intensified, because they were no longer supervised or tampered with by a central department of administration. Against this must be set the control exercised by the High Courts, or rather the check imposed by the possibility of appeal, and above all the new, peculiar, and unrestricted supervision of the High Court of Parliament, by which, during the eighteenth century, the whole field of local government was jealously searched.

Parliament and the relations between central and local government.

When the mode of Parliamentary supervision, and especially

private Bill legislation, is carefully considered, it is abundantly clear that this so-called "classical self-government" of the eighteenth century, with all its boasted autonomy, was strictly limited, and in some ways severely contracted, by the legislative action of Parliament.

From a constitutional standpoint, the Justice of the Peace administered merely in the sense that he executed laws passed by Parliament, including many of a private or local character. If any new public service, or enterprise, or local tax were needed, not hitherto imposed or permitted by any general statute, it was necessary to obtain the permission of Parliament in the form of a public or private Act. But apart from this, Parliament did little or nothing to restore the lost *Imperium* of central over local administration. In carrying out the laws, Justices of the Peace in county and town were quite independent. No watch was kept by any State department over their performance of this function. Only when they positively broke the law were their acts liable to reversal on the appeal of an aggrieved party to a higher tribunal. It was impossible to maintain anything like a regular control over the work of local government owing to the want of a permanent department at the centre. It is true that Parliament could at any time appoint a commission of inquiry into any branch of government, either national or local, in pursuance of the old Parliamentary privilege of unrestricted inquiry.[1] But there was no thought of systematic inspection, and if there had been, Parliament was not capable of undertaking it.

So far we have regarded Parliament as an abstraction or a legal entity in speaking of its relations to central and local government. To realise the true character of these relations we must turn from Parliament abstract to Parliament concrete.

At the beginning of the eighteenth century the House of Commons had 509 members sent by English and Welsh constituencies. To these were added 45 Scottish members after the union with Scotland in 1706. Of the 509, 80 sat for English counties and 12 for Welsh counties, and the remaining

[1] The first recorded case of the investigation of an Act of administration by a select committee of the House of Commons seems to be that into the miscarriages of the Irish war in the year 1689 (cf. Hearn, *op. cit.* p. 140).

417 represented 218 Parliamentary boroughs.[1] It is worthy of note that there was not at this time, nor ever has been, a "subjective" franchise for the individual as an individual. The idea of manhood suffrage is quite un-English. Originally, the House of Commons was rather, as its name implies, a body constituted by uniting the representatives of ancient local communities. An English citizen did not (and in law does not even now) as such secure the franchise. He got it, if he got it at all, not as being an Englishman, but because he fulfilled as such a qualification—owned enough land or paid enough rates in a county, or was freeman in a Parliamentary borough. The character of the House was territorial or local. But although this was the original conception, a change was slowly brought about after the fourteenth century, and members came to regard themselves as representatives not of the locality only but of the nation as a whole. At last, in the reign of Elizabeth, Parliament took the decisive step by sweeping away the residential qualification for its members. Far more serious was the change that came over the Parliamentary franchise itself, more especially in the boroughs. It had already been restricted by the transference of municipal government to the select bodies. Now the select body had power to confer the rights of a freeman upon non-residents, and this power was soon used and abused as a means of increasing the influence of the great landed proprietors in the towns and in the House of Commons itself. Thus the landed interest began to recover the ground which it had lost in the government of the country through the constantly growing disproportion of town to county representation.[2] Towards the close of the seventeenth century, when the monarchy ceased to manufacture Parliamentary boroughs, the constitution of Parliament hardened in a system which was to

Constitution of Parliament in the eighteenth century.

[1] For the constitution of Parliament at this time, cf. Gneist, *Verfassungsgeschichte*, pp. 677, 899; Hearn, *op. cit.* pp. 466-545; Goldwin Smith, *op. cit.* p. 112 *sqq.*; Taswell-Langmead, *English Constitutional History*, pp. 599-623.

[2] The number of counties and of county representatives in the House of Commons had stood untouched for 500 years when, in the reign of Charles II., the creation of new Parliamentary boroughs by royal writ came to an end, and with it one of the most dangerous prerogatives of the Crown. Newark, which became a Parliamentary borough in the year 1677, was the last of these royal boroughs.

last for a century and a half. Even then it was an antiquated system, a strange patchwork of privileges and anomalies, which became more outrageous the longer it resisted attempts at reform. Towns considerable in the thirteenth or fourteenth century still received the King's writ, though they had disappeared, or sunk into villages. Such places became known as pocket or nomination boroughs, because they were owned, and their members nominated, by the Crown or some great landlord. Large towns, too, sprang up, but remained without members; and the House of Commons ceased to represent in any but the most shadowy fashion the different interests of the country [1] and the different classes of the community. As the creation of boroughs by Royal Charter strengthened (as it was intended to strengthen) the King's party in Parliament, so did the conversions of town corporations in the sixteenth and seventeenth centuries. In most of these corporations only the governing body (the Common Council) and the freemen possessed the Parliamentary franchise, the rest of the population was excluded.[2] Thus the policy of the Crown, more particularly in the seventeenth century, corrupted the whole system of Parliamentary franchises, and produced a state of things which went from bad to worse by merely being left alone, until Parliament could not any longer claim to be a body truly representative of the whole nation.

The deposition of the Stuarts, the destruction of the King's prerogative, and the triumph of the Whigs only gave stability to the system. The Whig party had not the faintest thought of introducing any real measure of reform to reduce the evils of the franchise. On the contrary, the aristocratic leaders of the Revolution were as careful as their Tory opponents to leave the mechanism of Parliament unreformed. They knew well that Parliament as it stood was a serviceable instrument of government. The

The governing classes.

[1] At the Revolution Manchester was already "one of the most populous and prosperous" towns in England (Macaulay). It had about 6000 people and no member, though Cromwell required it to send a representative to his Parliament. In 1801 it was still unrepresented, though it had a population of 90,000. The case of Leeds provides an equally good illustration.

[2] The policy culminated, as we have seen, in the measures of Charles II. and James II., which precipitated the Revolution. It was commonly called "packing Parliament" (cf. Gardiner, *History of England*, ii. p. 645).

machinist only needed to be changed: the machine might be left unchanged. Parliament had hitherto been used by the Crown; it was now to be used by the governing classes. And it was soon proved that the nobility and gentry knew quite as well as the King had done how to turn and guide the machinery of Parliament. The hundred or so of pocket, or practically pocket, boroughs now became for the most part strongholds of the governing classes rather than of the Crown. The governing classes were composed of the families of birth and wealth, and were about equally divided into the two political parties (Whig and Tory) which long monopolised the struggle at the polls. Votes could always be purchased, and there were a certain number of "rotten boroughs," which were also purchasable commodities. Altogether, the Stuarts had left to the Parliament which overthrew them an evil legacy in the franchise, and one that was destined to prove dangerous to Parliament itself. For many years the Monarchy was passive. But when George III. came to the throne, self-willed, ambitious, and quick to follow up an advantage, he soon showed what a two-edged sword the competing parties had retained in a corrupt system of representation. The King, still distributer of orders, titles, and pensions, still the first social power in the State, and supported besides by a considerable feeling of loyalty among the masses of the people, began to put forth all his power and wealth in the electoral and Parliamentary conflicts, and soon formed out of his own purse and favours a compact party of the King's friends in the House of Commons.[1] The story of this last battle between King and Parliament, waged almost wholly under cover of Parliamentary forms, is one of the most interesting chapters in English constitutional history. But beyond solidifying and strengthening the theory and practice of Parliamentary government, these critical struggles which ended in the defeat of the King had no permanent effect upon the law and custom of the constitution.

The King and the squirearchy.

The Parliamentary system of the eighteenth century was vitiated therefore by the gross over-representation of towns, by

[1] The name was too simple not to be injurious. It reminds us, however, of the title which the Peelites liked to assume after the death of their leader: "The friends of the late Sir Robert Peel."

the want of justice and method which had attended the creation of Parliamentary boroughs—for they corresponded neither to the ancient or communal principle nor to the modern principle of representation according to population,[1]—and finally by that degeneration of Parliamentary franchise within the towns themselves which went with the decay of their municipal government. Indeed, all these symptoms of disease in the body politic implied or entailed a general lowering of the ancient status and practice of local government in England.

Nor can the processes of degeneration be fully apprehended until the economic forces which manipulated, utilised, and enjoyed them are set out in plain black and white. Of what class then were the men who twisted and turned the Parliament, the Privy Council, and the Municipality? They will be found, in fact, to be no other than the landed nobility and its social allies the squires, who arranged the Revolution of 1688, and established not only a new dynasty but the supremacy of their own class through the instrumentality of Parliament. The Revolution substituted for an absolutist monarchy by divine right, based in theory on the political theology of Filmer,[2] a limited monarchy founded by Locke upon reason, but actualised in the uncompromising supremacy of aristocratic rule. This result is apparent not only to the historian who can look back upon the past; it was also seen by shrewd contemporaries, and perhaps most clearly by the crafty statesman whom it most concerned, William III., who objected, as he said, to play the Doge in a Venetian Constitution.[3]

Our own outlook is confined to the effect of this class-

[1] Summed up in the two catchwords: "One vote one value," and "One man one vote."

[2] Filmer's doctrine of divine right lasted as the political badge of High Tories and High Churchmen into Hanoverian times. Cf. Swift's paper in *The Examiner*, No. 43, 31st May 1711: "Whoever asserted the Queen's hereditary right, that the persons of princes were sacred, their lawful authority not to be resisted on any pretence; nor even their usurpation without the most extreme necessity; that breaches in the succession were highly dangerous; that schism was a great evil both in itself and in its consequences; that the ruin of the Church would probably be attended by that of the State; that no power should be trusted with those who are not of the established religion,—such a man was usually called a Tory."

[3] The system reached its climax under the long "squirearchy" of Sir Robert Walpole. Cf. for Walpole and the politics of his day, *Life of Walpole*, by J. Morley; Goldwin Smith, ii. pp. 170-180; Lecky, i. pp. 341-411, 466-509.

rule upon the organisation of Government. The supremacy established by the Revolution was not, be it remembered, a sudden development. It was but the gathering of a fruit which had slowly ripened since the Reformation. The overpowering weight of the landed interest was a social and economic as well as a political growth. The confiscation of monasteries and their estates, the growth of Latifundia, the reduction in the number of small freeholders, and the increasing dependence of peasants upon landlords brought about by the Enclosure Acts and Acts of Settlement, all contributed to the same result. The commercial and manufacturing interests which had come to the front with the rise of the Navy were too weak at the time of the Revolution to make a stand against the landed aristocracy; they were only formidable enough to provide the predominant class with a motive for self-protective legislation. And no sooner was the new dynasty established than legislation was introduced to fortify the political power of landlordism in the counties. After several smaller measures, the majority (country gentlemen, Whig and Tory) in the House of Commons tried in the year 1695 to exclude from the House every person who had not a certain estate of land worth £500 a year for a knight of the shire, and £200 a year for a burgess. The Bill was carried by a majority of 23 in spite of the protests of the commercial towns, and the Lords agreed without an amendment. William, however, who had been loyally supported and assisted by the merchant classes, refused his assent. In the next year a very similar Bill was introduced, though with an amendment permitting a merchant possessed of £5000 to represent the town in which he resided. But the Lords, after a year's consideration, had seen that such a law would be advantageous to the small squires at the expense not only of the trader, the lawyer, and the scholar, but also of the grandee, who wanted to put his younger sons and brothers into Parliament. They therefore threw out the Bill. But the resentment in the Commons was great; in 1710 the squires triumphed, and the Bill passed into law.[1]

Plutocratic legislation.

[1] 9 Anne c. 5; cf. for the Bills of 1695 and 1696 Macaulay's *History of England*, chaps. xxi. and xxii. The property qualification for Members of Parliament was abolished by 21 and 22 Vict. c. 26.

A similar policy in the reign of George II. raised the qualification for the office of Justice of the Peace. A county Justice, it was enacted, must have an income from freehold, "or an estate for some long term of years," of not less than £100 a year, an exception being made in favour of peers and their eldest sons or heirs of the nobility, of whom no qualification was required.[1] At the same time, the income necessary for a juryman was increased from forty shillings to ten pounds.[2] Lastly, the Uniformity and Test Acts,[3] the offspring of the religious intolerance of the Restoration, still debarred a good part of the middle and lower middle classes in town and country from taking their share in public life. The plutocratic tendency of this legislation is unmistakable. Since the Restoration, the office of Justice of the Peace had become strongly aristocratic in character; but as the development of industry created new wealth, the new gentlemen of commerce strove to enter public life through the magistracy or the House of Commons. The old order resented the influx of the new, and hence the additional obstacles which Parliament interposed between commerce and politics.[4] But not enough was done to create an aristocratic *régime* in the style of continental states. The obstacles raised were not insuperable. There was no aristocratic caste—nothing to prevent the governing classes being recruited from below. But a crafty policy provided that the aspirant to a public career should identify himself and his interests with the squires and the clergy by the acquisition of landed estate and by an outward conformity to the tenets of the established Church. And the landed interest was fortified in its monopoly of government by its monopoly of education. The ancient public schools, the ancient universities, and all the old national foundations were strictly confined to the established sect, and frequently to the sons of gentlemen in the technical sense of that word. Thus Harrow and Eton, Oxford and Cambridge, by providing intellectual training for the govern-

[1] 18 Geo. II. c. 20.

[2] It must be remembered, however, that prices had been rising and the purchasing power of silver diminishing for two centuries.

[3] 14 Car. II. c. 4, and 25 Car. II. c. 2.

[4] On the oligarchical tendency of the time and of its legislation, cf. Gneist, *Englische Verfassungsgeschichte*, pp. 661-899; and Goldwin Smith, ii. p. 110 *sqq.*

ing classes and by withholding it from the rest, served to strengthen and perpetuate an oligarchy.

To these elements of strength must be added what has long been a peculiarity of English public life. While very high salaries attached to officers appointed by the central government,—judges, bishops, generals, inspectors, and the like,—and while the King and his Ministers had at that time a vast deal of patronage to dispose of,—sinecures, benefices, pensions, places at court,—it had become unusual for members either of the House of Commons or of the local authorities to receive any remuneration (even out-of-pocket expenses) for their services. It was otherwise at first. The statutes of Edward III. and Richard II. expressly prescribed "wages" for the Justices of the Peace; and both towns and counties were obliged to pay wages to their representatives in Parliament.

Principle of honorary service.

But "payment of members" was not popular, and many towns refused to send delegates to Parliament, and asked to be relieved of the burden. The acceptance of payment by a member of Parliament had long been unknown even at the time of the Revolution. It was another case in which an English institution had been vitally changed by the mere supervention of a custom or a use. It was a propriety, a rule of good taste passed by the upper classes in their social parliaments, but never submitted to the Legislature, though it was to remain in force, unamended and almost unbroken, for a term of more than two centuries.[1] Thus service as a member of Parliament, like service on the local benches, had become honorary, and further involved a great expenditure of time and money. In the one case, long stays in London, in the other frequent sittings at Petty, Special, and Quarter Sessions, tended to exclude from membership all save the leisured classes, and made the raising of the qualification almost supererogatory, except with regard to the ownership of land.

But these unpaid services must not be regarded as involving the landed classes in a net economic loss. They

[1] On the discontinuance of Parliamentary wages, cf. Hearn, pp. 526-530. It was shown in the debates of 1677 that the custom fell into disuse towards the middle of Elizabeth's reign.

were amply compensated—the more influential families in particular—by their monopoly of the whole field of state patronage from fat sinecures and pensions to paid offices, large and small, central and local, in every department of state (army, fleet, church, revenue) and in every part of the Empire. No examination was necessary, no proof of competence was required. Most posts worth having were in the gift of the King and the great officers of the Crown, and were conferred either upon favourites and parasites or upon those whose support it was necessary to reward or purchase.[1] Patronage might assuage or divert the bitterness of the pamphleteer, the unscrupulous hostility of the agitator, and the dangerous insuppressible talent that would force its way up from time to time from the lower ranks of society;—such are some of the *arcana imperii* that underlay the honorary services of this disinterested oligarchy. Patriotism claimed its reward.

This same class of aristocracy and gentry turned the town constitutions without the slightest scruple into the instruments of their own supremacy, and the small Parliamentary boroughs became mere political appurtenances of the nearest landed estate. Even in the larger towns the influence of neighbouring county families was usually predominant; so feeble was municipal life in England compared with that of the Continent, and so complete was the dependence of a Select Body upon the patronage and protection of the lord of the manor and high steward. The release of the Justices of the Peace from Star Chamber control was of no avail, for the Justices were members or nominees of the governing class. Nor did the positive action of Parliament mend matters. The old citizen parliaments of the early Stuarts were a thing of the past. The Tory party in the House of Commons was almost wholly, and the Whig party mainly, composed of country squires. The two parties were at first very sharply divided upon dynastical and religious questions, and, when Jacobitism disappeared from the field of judicial politics, religious divisions were reinforced by differences upon finance or upon colonial

Predominance of county families.

[1] The work of political reform was begun by Burke with a movement for the abolition of sinecures. At that time the King's turnspit was a member of the House of Commons.

and foreign policy. But from the standpoint of internal administration and constitutional reform there was little to choose between Tories and Whigs. They were not opposing parties, but mere factions within the same class. So far as home politics were concerned, the City of London, Westminster, and a few large towns like Bristol, where the franchise remained still a genuine thing, were the strongholds of the so-called "moneyed interest," and sent a few representatives of commerce and industry to Parliament. But in the smaller towns and in the country not only was the Parliamentary franchise in a shocking state, but the middle classes, especially the small dealers and shopkeepers, were dependent upon the favour of "society" for their custom, and were apt to regard the interests of the gentry as their own. As for the farmers and labourers, when their interests plainly clashed with those of the landlords, as in the case of the land laws and the enclosure of common lands, their presumptuous protests were sternly suppressed by a House of Commons composed mainly of agricultural landlords. But toward the end of the century, with the increase of manufactures and the growth of foreign and colonial trade, the House grew more alive to commercial interests and began to cherish and protect them by a well-meaning though disastrous system of tariffs. The English nobility, as we have said, never was a caste, and was consequently able to widen its interests from time to time as those of the nation developed.

And now glancing back over this historical landscape, we are able to realise that at the beginning of the eighteenth century all the functions of the State were concentrated in the hands of a single class, and that class intrenched and fortified within a close and exclusive constitution. If Parliament and Cabinet, State Justice and State Church, local government in counties and towns, control and supervision even of the parochial democracy—if all these wheels ran smoothly in the old legal and historical forms, the reason is simple. There was no friction, because the whole machinery of the constitution was now controlled and guided by one and the same class in one and the same interest. But where its own advantages were remote, this ruling class had a strong sense of duty and of loyalty to the national traditions. It produced statesmen well

qualified by character and talent for leadership, who proved themselves able in calm weather and in stormy to advance or protect the interests of the nation. And if hideous errors were committed by the blunderers who sometimes held the helm, yet it is undeniable that a government of lords and squires laid broad the foundations of the vast colonial empire of Greater Britain. The love of conquest, the spirit of adventure and enterprise, the commercial instinct, the capacity for war, are no less characteristic of *their* England than an inert, obstinate, conservatism in home politics and religion. But they were building on a strong framework of laws and rights, which commanded the respect of the people, because the people trusted in the integrity of the Judges as the guardians and interpreters of law. The Act of 1701 ensured the independence of the Judges by clauses transferring their salary to the budget as a fixed sum, and providing that no Judge should be removed otherwise than by an address of both Houses to the Crown.[1] So that henceforth a Judge held office not during the King's pleasure (*durante bene placito regis*) but for life.

Independence of the Judiciary.

It was customary to appoint to judicial office only barristers with a large practice; and so high were the standards of the profession, and so glorious the traditions of the office, that the Judges, in spite of their strong sympathies with the governing classes from which they were almost invariably drawn, were seldom suspected of conscious partiality. And the High Courts of England have certainly succeeded to a marvellous degree in excluding from their decisions the bias of party politics. But what is generally true of the Judges must not be assumed to be true of the Justices of the Peace. In the towns they were identical with the officers of the corporation, and it was hard in a conflict of interests for a Justice to forget that he was a corporator. In the counties the administration of the Bench had developed into an unrestricted patriarchal tyranny over the lower orders. The inevitable consequences, class justice and class administration, followed with results especially scandalous whenever the material interests of the ruling aristocracy were involved. Their severe and often cruel treatment of trespassers, of poachers, and of those who interfered with hunting

[1] An Irish judge, Sir Jonah Barrington, was so removed in 1828.

might be cited. But the tradition still lives; and the best notion of a typical County Justice of the eighteenth century can be got from a bad specimen of the same class in the nineteenth.[1]

The practical autonomy of local authorities.

Perhaps the most striking feature in this one-class rule is the want of any regular working control over the various authorities. The localisation of home government is clearly complete—that is to say, there is no central body to lay administrative hands upon the independence of a local authority. On the other hand, it is true, the local benches and corporations were often in many ways hampered and restricted by Parliament, and they had of course no general power to make orders and regulations, or to inaugurate improvements at the public expense without the consent of Parliament. But the identity of the elements composing Parliament with the functionaries of local government made this dependence little felt. The men who let a local Bill through a Parliamentary committee were often the same men, and were almost always from the same class, as those who administered in Quarter Sessions. Besides the town and county business, parochial affairs, including the relief of the poor, the control of police, and the administration of the law of settlement, as well as the whole system of rates, seldom went beyond the county or borough Quarter Sessions. For appeals to the King's Bench only occurred when there was some very serious and exceptional cause of complaint.

Independent criticism of local administration.

Only one hope of watchful criticism and supervision from within the House of Commons remained, and that rested on a small group of independent members. The influence of these men far exceeded their numbers; but an account of their activity and its important consequences must be reserved for the Second Part of this book. By the side of these real representatives of the people, and before long in actual touch with them, public opinion had begun to work, expressing itself not only in public meetings but still more in periodical literature, which was gaining political influence and beginning to attack social evils, and to criticise the failures and faults of government. In 1695 the

[1] Or see Fielding's "exquisite pictures of human manners" for some drawings from the life. Perhaps Mr. Justice Thrasher is the best.

press censor was for ever abolished in England,[1] and accordingly the eighteenth century is the first century in which men were free to express their opinions in print, although to maintain and secure this guarantee of civic liberty many stiff battles had still to be fought. With but few important exceptions,[2] the political press was confined to London, the natural centre of news and politics; and this circumstance helped to make London the best barometer of popular feeling, at least among the industrial classes of the community. From London, therefore, came the first tentative efforts of new political and social forces which stirred the new national life to its depths and set in motion the genius of Reform.

In the foregoing pages we have tried to understand the deep changes Parliamentary government introduced into the organisation and administration of public authority; and we have shown that these changes were perfected without abolishing the old organs of State, or even restricting their functions. Nay, the old institutions were jealously conserved by the ruling classes—for their own use. And in this way, institutions intended originally to counteract the absolutist tendencies of the Crown were so laden with class prejudices, ideas, and interests that they emerged at the end of the period as the citadels and strongholds of the landed gentry. How, along with this degeneration of institutions, new political ideas and new social forces were rolled in on a wave of unparalleled commercial development; how they at last, breaking through the upper surface of political life, gradually remodelled and revived the whole organisation of English government—this is the peaceful revolution we have next to describe.

[1] For the event and its immediate effects, cf. Macaulay's *History*, chap xxi.; and Goldwin Smith, ii. p. 114.

[2] Such as the *Leeds Mercury*, established early in the eighteenth century.

PART II

THE GROWTH OF ENGLISH RADICALISM AND ITS INFLUENCE ON THE GOVERNMENT OF THE COUNTRY

CHAPTER I

POLITICS AND POLITICAL THEORIES IN ENGLAND FROM THE REVOLUTION TO THE REFORM BILL

I

In the course of the eighteenth century the machinery of the English constitution fell, as we have seen, altogether under the control of the aristocracy and landed gentry. So long as the policy of the ruling class was tolerably national, so long as their interests ran parallel with those of the whole country, this system of government could strike root and develop. An aristocracy that had saved the constitution and the Protestant religion by the expulsion of James II. had some claim to be regarded as the representative of the entire nation and of its highest interests.

Aristocratic administration after 1688.

And at first there were few obstacles. When the eighteenth century began, England was still in the main an agricultural State. Its strength still lay in the corn-growing districts. Outside London there was scarcely any distinctive town life to set off against the social and political predominance of the landed interest. This being so, the great landed proprietors were felt to be the national leaders, and the people acquiesced in the sudden changes involved in the deposition of a dynasty and the elevation of the great Whig families to political and

social supremacy. Rest was needed, after the hard fights of the seventeenth century, for the growth of commerce and civilisation. Political tendencies were conservative; and the great changes in the spirit and functions of the constitution were uncontested because they were unnoticed, all the historical forms and offices remaining unchanged from the King to the parish constable.

Outwardly the only new element introduced into England by the Revolution was party government. Not that the idea of parties or their organisation was foreign to England. The parties of Tory and Whig served to crystallise the two contending factions within the governing class; but it is undeniable that the line which divided the class also at first divided the nation. The position of the Crown and the exercise of the King's prerogative, as well as the relations between the Established Church and Nonconformity, had created a great popular cleavage before Puritans and Cavaliers, and long before Whigs and Tories had given it the organised expression of parties. The fall of James II. sharpened the division; for it turned the Tories into legitimists, and at the same time provided the Whigs with a foreign policy which long ruled the lines of party division. But their position as King-makers of the House of Hanover, and supporters of all Kings therewith established, and the long lease of power they enjoyed under the first two Georges, tended to demoralise the Whigs and to whittle away the real distinction between the two parties. The party conflict degenerated into a struggle for office between two groups, both of which represented the landed interest, and defended the electoral system against reform.

Growth of party government.

Degeneration of parties.

Granted, then, that the constitution had been so manipulated as to secure the rule of the strongest and wealthiest class, yet the new system was not long established before there appeared signs of a coming storm. In the first place, the oligarchy had its centre of gravity in the economic and social predominance of the territorial class, and its power must inevitably be endangered when the centre of gravity shifted towards the commercial and manufacturing elements of the community, whose interests became less reconcilable with those of agri-

culture as their relative weight increased. Secondly, the broad political theory on which the rule of an aristocratic parliament rested, based though it was upon the advanced thought and reasoned statecraft of Locke, could not resist the corrupting influences to which it was exposed; and consequently those unseen links which joined the ruling class to the best political thought of the time threatened to snap and to leave intelligence to separate itself from government. Lastly, it was possible that the Monarchy, seeing the equal balance of the two factions and their growing unpopularity, might try to make use of the corruption of parliamentary machinery, and, by taking a hand in the party game, might become the third and deciding factor in the government of the country.

All these possible dangers became real. Resistance broke out in all these directions, and almost simultaneously. The accession of George III. gave the necessary impulse, for he had no sooner come to the throne than his obstinate determination to have his own will in government made itself felt. And his active interference in politics coincided, as we have said, with the beginning of an economic revolution and with a revival of spiritual and political life in the middle and lower classes of society. George III. was the first king of his line with English sympathies and feelings; the cause of the Stuarts had not survived the failure of the Pretender in 1745; the old Tory legitimists no longer held aloof from the Court and the Government; and a general feeling of loyalty was diffused through the realm. With the dynastic question was removed the chief cause of contention between Whigs and Tories, and their differences were reduced to a minimum by the growing religious toleration, or indifferentism, of the upper classes.

George III., 1760.

Such was the situation which George III. was able to turn to account, with results at first so considerable. But in depriving the Whigs of a monopoly which had grown intolerable, and restoring the Tories to power, he was not merely furthering his own personal aims; he was showing that the historical grouping of the ruling class into two national parties had become a sham; he was exposing the corruption of Parliament to the eyes of the nation, and inviting the approach of genuinely

democratic ideas and genuinely democratic movements—consequences as unwelcome as they were unforeseen, and quite as dangerous to the Court party as to the Parliamentary oligarchy.

And so it came to pass that George III. was the unwilling instrument in awaking the masses of the people from the political slumbers in which they had lain since the time of Hampden and Cromwell. The democracy was roused; its dormant political instincts were concentrated into a torrent of Radicalism which spread the idea of modern representative government and completely swept away the *ancien régime*. The whole revolution came about gradually and peacefully as befitted a land justly renowned for its jealous maintenance of freedom and unalterable respect for law. Once again the constitution became possessed of a new spirit and substance without undergoing any outward change in its organic parts. From an instrument of the landed aristocracy it was converted into an instrument of popular self-government, and the history of this conversion is the immediate consequence of George III.'s interference in politics and of the corresponding development of English Radicalism. The first phase of this new revolution consists in the repulse of attacks aimed by a corrupt Parliament against the constitution and in the creation of a new political ideal; the second phase is found in some attempts which soon miscarried, to distort that ideal and recast it after the model of French Jacobinism; in a third phase the Radical colours, torn down and draggled by twenty years of war, are again hoisted to fly proudly over a practical programme of parliamentary and constitutional reforms.

The three phases of the Reform movement.

This third phase is concluded by the Reform Act of 1832, and with it the first great epoch in the development of English democracy comes to a close. From this point onwards the influence of the labour movement and of Socialism began to be felt; yet political Radicalism contrived to retain the leadership of the masses almost down to the present time, and to control the genius of reform, confining it for the most part to the work of political emancipation and to alterations in the machinery of representative government, and avoiding any revolutionary measure.

After 1832.

It will appear from our rapid survey that the Radical idea of progress found expression almost invariably in the extension of the Parliamentary franchise. Parliament was the object of the Radical reformer, the theme of the Radical agitator. Political Radicalism from its beginning and onwards, with the slight exception of the revolutionary or Jacobin movement (1789-95), never sought to wreck the old historical constitution or to set up a brand new one in its place. It aimed at renovation and reform by instalments, in order that the democratic element might gradually be strengthened and provided with Parliamentary weapons to use in the struggle with the landed and manufacturing interests. Its weapons were essentially peaceful; for though the Reform of 1832 was finally secured by a popular movement which would have resulted in a revolution had not the Duke of Wellington and the Tories yielded at the last moment, that of 1867 resulted from the pressure of a firm rather than a violent agitation; and the enfranchisement of agricultural labourers in 1884 was a victory of the Commons over the Lords rather than of the people over the Commons. The history of the growth of political democracy in England is a tribute to that profound insight into the conditions and forces of modern society, and to that indestructible common sense exhibited by all classes of the nation, and especially by the statesmen who represented and directed the nobility and gentry on the one hand, and the commercial and manufacturing interests on the other.

To write a history of the rise of Radicalism and the development of Democracy in England would be tasks far beyond our purpose, which is simply to explain the conditions out of which the modern system of local government arose and the way in which, thanks to the work of philosophic Radicalism, it grew to be a living and important function of democracy. We are therefore primarily concerned with the development of political and juristic ideas, and with the inward continuity of a number of laws covering sixty years of the statute book, and only in a secondary degree with the outward course of events. Accordingly the pages immediately following will unfold the growth of ideas, which, being translated into practice, completely regenerated the inner government of England as regards both its function and organisation.

II

It has been remarked above that the personal intrusion of George III. into the business of government gave a new stimulus to political life. Yet consequences so vast could never have followed but for the expansion of industry and for an enormous change, not only in the distribution of wealth, but in the intellectual character and political aspirations of the leading classes.

Commercial and economic changes of eighteenth century England.

At the beginning of the eighteenth century the commercial element or "moneyed interest" had already grown to a consciousness of its importance and of such a conflict between its own interests and those of the nobility and gentry as made it a separate and independent political factor. The Elizabethan buccaneers, Cromwell's foreign policy, the piratical prowess of Clive and Warren Hastings, and generally the wars with Holland, Spain, and France, had left England the greatest colonial empire in the world, with many rich, if distant, markets to encourage the industry of her manufacturers and to tempt the enterprise of her merchant venturers. By the middle of the eighteenth century an aristocracy of wealth had almost come to rival the old aristocracy of birth in social and political power. It had found its way into Parliament, partly by the choice of the London electorate, partly—in the case of rotten boroughs—by purchase. After the middle of the eighteenth century, English manufactures progressed with far more rapid strides, and the wonderful series of inventions which applied steam power to production enabled the country to emerge alive from the humiliations of the American War and the triumphant but impoverishing struggle with Napoleon.[1]

The conversion of England from an agricultural State into the greatest industrial and commercial State of the world, the substitution of large for small industries, and the spread of Capitalism, necessarily involved a complete change in the

[1] In 1767 Hargreaves invented the spinning jenny, and two years later Arkwright set up his new patent, the spinning frame, in a mill worked by horses. In 1785 Watt completed his first steam-engine and relieved the textile industry of its dependence on water-power.

relations of the various classes of the population, in the formation of society, and in the national traditions.[1]

All this time a fruitful field was being prepared in London for the growth of new social and political ideas, the seeds of which had been imported from quite another soil. And here we are met for the first time by far-reaching influences exercised by French over English thought—influences, however, which were refined and transmuted in their new environment. Buckle has rightly observed that an unmistakable line divides the pre-revolutionary literature of France into two epochs, one of which ends, as the other begins, about the middle of the eighteenth century.[2] In the first, the Church was the special object of the attacks of the new scepticism under Voltaire's leadership. Suddenly, however, scepticism and philosophic criticism began to be directed against the existing state of society and government, and the new phase of thought culminated in the extreme doctrine of natural rights and individualism—the gospel according to Rousseau. But at the same time there broke out a revolt against the commercial policy of Colbert; and the physiocrats, with Turgot at their head, began to teach Free Trade with the watchword of *laissez-faire*. This vast new world of thought now began to pour over into England, where the recent growth of wealth and intelligence secured it a reception all the more enthusiastic because of the close commercial and literary relations which already subsisted between the two countries. Accordingly, the three movements in France soon produced corresponding movements in England. Already in the time of Bolingbroke sharp observers noticed a great increase of indifferentism to religion, especially in the ranks of the intellectuals, a marked falling off in the conflict of creeds, and a complete flattening out of spiritual instinct and theological learning in the established Church.

Yet this listlessness of the upper classes did not prevent the lower ranks of society from vibrating to the mighty impulses of a Wesley and a Whitfield; and the popular

[1] Cf. Spencer Walpole, vol. i. chap. i.; vol. ii. pp. 1-114; Toynbee, *Lectures on the Industrial Revolution*, pp. 27-105.

[2] Buckle, *History of Civilisation in England*, vol. i. p. 294 (German edition).

movement, which created or strengthened so many Nonconformist bodies, had certain political consequences. The prominent part taken by the local congregations in the life of a Nonconformist church; the repudiation of the priest and of all priestly pretensions; the democratic gatherings which naturally sprang from a primarily religious association; lastly, the custom of lay members taking their share in praying and preaching—all these incidents of Nonconformity helped to preserve among the masses the faculty of political co-operation in times when an aristocracy was supreme in Church and State; and thus the movement which revived the religious instincts of the people revived also the spirit, as it accustomed them to the forms, of democracy. Such an uprising of Nonconformity necessarily involved the decline of the State Church and its estrangement from the lower orders; and this, again, sharpened the popular feeling against an oligarchy with which the Church was so closely identified.[1]

The spiritual revival.

Moreover, the new political and social doctrines of the French encyclopædists very soon found enthusiastic interpreters and advocates among men of intellect and leisure in England. Nor is there any wonder that they made way so rapidly, seeing that Rousseau did little more than carry to their logical conclusions thoughts long before expressed in England and stamped with the authority of Locke.

Free thought.

Again, the theory of Free Trade was advanced, as it were at one stroke, by the genius of a single writer to a position of vantage which secured its ultimate recognition, not in its native France, but in England, the home of its adoption. Adam Smith's *Wealth of Nations* made converts of Pitt and Shelburne, and the commercial treaty of 1786 between France and England is an unmistakable proof of the influence of the Free Trade doctrines on both sides of the Channel.

Free Trade.

All these ideal factors tended towards a complete transformation of men's ideas about government at the very time when public events were producing the first popular movement

[1] For the growth of Nonconformity generally, and of Methodism in particular, cf. Lecky, *op. cit.* vol. ii. chap. ix. pp. 563-691.

in English politics. These events centre in the election of Wilkes, who had rendered himself odious to the King by maintaining in the *North Briton* that Ministers are responsible for the Royal Speech, and that "freedom is the English subject's prerogative." How a profligate spendthrift was converted by royal persecution into a popular hero, how after exile he was elected by the freeholders of Middlesex, how in violation of the law and the constitution a servile House of Commons, at the instance of the King, declared him disqualified to sit, how the city of London threw itself into the fray, made Wilkes an Alderman, and with the country at its back fought both the King and the Parliamentary majority, is told in almost every history and biography of the period.[1] For the first time since the days of Charles I. an attempt was made to bring pressure from without to bear upon the action of Parliament and Government. If a date is to be found for the beginning of the democratic movement, the historian will choose the years of Wilkes's election and rejection, 1768-69. For from the doings and sufferings of this intrinsically trivial character came results of the utmost importance to the progress of English politics and law. For the first time the oligarchical principles of government and the unreal divisions between Whigs and Tories were subjected to the knife of an effective criticism; for the first time the modern Radical ideas came to the front in politics and took practical shape in the earliest experiments of the Radical party at organisation. Political clubs and societies[2] were founded; political meetings were called to discuss and pass resolutions and to exercise the ancient right of presenting petitions to Parliament. The character of Wilkes and even his personal triumph[3]—though

The first popular movement in politics—Wilkes.

[1] Most stirringly by Sir George Trevelyan in chaps. v. and vi. of *The Early History of Charles James Fox.*

[2] Thus the Society of the Supporters of the Bill of Rights raised £18,000 in as many months. But the contributions which were to have been devoted to impeaching Ministers and restoring Annual Parliaments mostly went in paying Wilkes's debts. See Trevelyan's *Early History of Charles James Fox*, p. 193. In this society Horne Tooke played the leading part, both as a speaker and writer.

[3] On 17th February 1769, the House of Commons passed the Resolution declaring Wilkes incapable of being elected a Member of Parliament. In 1774 he was allowed to take his seat. In 1782 on the motion of Wilkes himself the

that was striking enough—are as nothing to the causes and movements with which his name is interwoven so inextricably that it must be inscribed, as Mr. Gladstone once declared, whether we like it or not, on the roll of the great champions of English freedom. The new political clubs and Wilkist organisations were not alone. Pamphleteers and leader-writers like the brilliant but anonymous Junius fed the agitation for which a great scientist like Priestley, a popular preacher like Price, then Cartwright and Jebb, paved the way. For our own purpose it is especially interesting to observe that even in the corrupt machinery of local government there was still enough of a popular instinct left to provide powerful assistance to the cause of Wilkism. The Common Council of the City of London, Guilds, Municipalities, and even, in some instances, the County Benches forwarded their petitions and remonstrances, urged on by Radical merchants, constitutionalists like Burke, or Whig squires with democratic sympathies. In the words of a brilliant writer, "a string of sulky common Councilmen or Justices of the Peace, filing through the rooms at St. James's, with an address about their invaded birthrights and the valour of their forefathers, and expecting to be received as graciously as if they were there to congratulate the King upon the birth of a princess, would do more than a score of Parliamentary debates to arouse in George III. a suspicion that his scheme for governing the country by weak, divided, and dependent administrations might end by being as disagreeable to himself as it was distressing to his subjects." [1]

Wilkist Councillors and Justices.

Without entering at length into the history of Wilkism and of the larger movement to which it contributed, let us fix our attention upon its essentials and characteristics. The very name of the Society of the Supporters of the Bill of Rights indicates that Radical doctrines started from the notion of protecting the right of the people then curtailed and threatened by the arbitrary conduct of King and Parliament. This was the first phase; and a thousand writers informed

House of Commons annulled by a majority of 115 to 47 the resolution of 1769 which had been passed by 235 to 89.

[1] Trevelyan's *Early History of Charles James Fox*, pp. 199-200. Cf. Burke's Letter to Lord Rockingham, 2nd July 1769.

the nation that before the law of Henry VI. all freeholders had a vote for Parliament, or that until William III.'s reign Parliament was elected annually. The Septennial Act of 1717 was cited as a gross breach of the constitution by Parliament. Parliamentary corruption was exposed and traced to its home in the small boroughs. From the first the Radicals demanded Parliamentary reform and the restoration of old principles. Thereupon the political philosophers pushed to the front with the theory of natural rights to prove that a representative ought to be a mere delegate responsible to his constituents, and that the life of Parliaments should be shortened in order to strengthen the influence of the electorate. But the new theory of Radicalism had at least this in common with the older: that both aimed at an organic reform of Parliament. There was little public criticism of Government; all hopes were based on an improvement in the constitution of the great central body which combined the supreme functions of legislation with control of the Executive.

Not less important than the Radical doctrines themselves was their effect upon the political ideas which had served as the intellectual currency of the ruling classes from the time of the Revolution onwards. The line of cleavage which at first divided Whigs from Tories has been stated. It was already blurred and indistinct when George III.'s policy excluded the Whigs from office and drove many of them into more or less hearty sympathy with Wilkism. Artificial distinctions and pedantic differences disappeared when it was seen that a third party of "the King's friends" had been formed and held the balance in the House of Commons—a party born of corruption and devoid of any principle except that of uniform subservience to the King. The new party had destroyed party government. A sham was exposed; the feigned division of the nation into parties was seen to have been only a disguise for the rule of the nation by a single class, divided indeed into two or more factions, but these factions contending less for principles than for office.

Such were the conditions under which Burke lived, and upon which he worked. The greatest political thinker of that or perhaps of any time, he strove by speech and pamphlet

to fortify the doctrine of party government against the destructive agencies of the King. He translated the abstract constitutionalism of Locke into a real and practicable system incomparably profound yet incomparably clear. His literary genius not only immortalised the transitory things of his day: it idealised and sublimated the English aristocracy as a rule of the best with a warmth of eloquence and conviction that persuaded many great men among his contemporaries and successors.[1] For besides contending against the fatal innovations of the King, Burke was also engaged, as champion of the existing constitution, in combating Radicalism. Without disputing the desirability of minor amendments in matters of detail, he portrayed with a mysterious veneration the constitution of 1688 as a consummate masterpiece of state-craft. And seeing that his argument did not rest like that of Locke or the Radicals upon natural right, but on the utility and excellence of the constitution, as proven by history, Burke too must be regarded as a pioneer. He paved the way for a completely new method of studying the law and the constitution.

Burke and Montesquieu.

He was the first who consciously applied history to politics and regarded society as a living whole. He was above all, perhaps, the first to make the practical working of an institution a criterion of its value and an argument for its abolition or preservation. Burke is the father of the best type of modern conservatism, which thinks that more of the old can be preserved by cautious concessions to progress than by an obstinate *non possumus* or a merely reactionary spirit.

If one may speak of the borrowings of a genius so original as Burke, Montesquieu is undoubtedly a writer whose historical treatment of things political profoundly affected the author of *Thoughts on the Present Discontents.*[1] In truth, Montesquieu, especially by his picture of the English constitution in *Esprit des Lois,*[2] contributed greatly to the march of political philosophy in England; and his influence seems the more remarkable to us who know that the judgment upon their constitution, which was accepted by

[1] *E.g.* in *Thoughts on the Cause of Present Discontents,* and his Letter to the Duke of Richmond of the 17th November 1772, given in Morley's *Burke,* p. 93.

[2] Published at Geneva in 1748.

English publicists as a revelation, was not only the judgment of a foreigner but of a foreigner who had picked up his impressions in a very casual and superficial fashion. Montesquieu's constitutional theory is obviously akin to the Aristotelian division of the forms of government. There are pure constitutions—monarchy, aristocracy, democracy—and mixed constitutions containing more than one of these elements. Montesquieu argues that the mixed constitutions are the best, and takes the English constitution as a model because he finds in it a triple division of the powers and organs of government. The wisdom of the English constitution lay, according to Montesquieu, in a division of legislative and executive powers between King and Parliament, and in a further subdivision of the former between the House of Lords and the House of Commons. The power of either House was checked and limited by the veto of the other, and the balance of power was maintained as between the King and the two Houses by the embodiment of executive government in the Crown—which, again, found its power sharply restricted by the independence of the legislative organs.

Montesquieu's theory, though erroneous, or rather because it was erroneous, was admirably suited to Whig sentiment. First it threw a diplomatic veil over the real division of powers in the State. Secondly, it was a great advantage to the governing class to be able to point to the authority of the great Montesquieu in proof of their favourite thesis that the existing constitution was the best of all constitutions. Montesquieu had provided them with a weighty scientific justification for defending the constitution against those who would amend it as well as against those who would end it. It was the purely conservative texture of his theory that won him so great a reputation in England in so short a time; and it was this that attracted Burke. But the theory of Montesquieu attained a very special degree of importance on another account. When Parliamentary conflicts were at their hottest, the theory was adopted as the philosophic basis of a work which is still regarded as the catechism of English law. In 1768 Dr. Blackstone published his famous *Commentaries on the Laws of England*—the first comprehensive presentation of English

Montesquieu and Blackstone.

law, masterly alike in form and content, still unsurpassed, not to say unequalled, by any later work of English jurisprudence. But the greater the literary pre-eminence of Blackstone, his services to English jurisprudence, his achievements in defining and illuminating the principles of civil and criminal law, so much the more fatal to the study of the English constitution was Blackstone's adoption of Montesquieu's theory with but a few slight modifications touching the formal position of the King in Parliament.

Thus at one and the same time the error of the French publicist was canonised in the English legal world; the political thought of whole generations of English students was led astray; and even the actual course of politics was sensibly altered. Just because Blackstone sets down the minutiæ of the constitution with the exactitude of a thorough lawyer, he gives to Montesquieu's theory the appearance of a broad generalisation fairly grounded upon a number of positive English laws. Blackstone's *Commentary*, it should be remembered, was the first legal description of the English constitution. Jurisprudence is always concerned with the logical relations of abstract conceptions. Blackstone, accepting and working on an abstract theory, painted a picture which was not true to the real distribution of political power, which did not correspond with the real meaning of institutions formally unchanged, but for a time utterly darkened and obscured the actual functions of government and the relationship in which at that time they stood to one another. According to him the King is the supreme legislator, administrator, and judge. In a formal sense that was true then as it is true to-day. But a description of the English constitution starting from the conception of England as a monarchy gave of necessity an utterly false impression of the reality. Blackstone ignores the Cabinet, and knows nothing of the complete change which had come over the relations between the reigning Sovereign and Parliament; for there was nothing of the sort entered in black and white on the statute book. The Justices of the Peace are defined as officers appointed for executing the King's will; but Blackstone omits to add that, since the days of Henry VIII.'s Justices to whom his label

The sources and consequences of Blackstone's power.

really applied, an enormous change had come over these functionaries. And the remainder of Blackstone's constitutional chapters is open to similar criticism. In the case of almost every English institution there was a sharp contrast between Blackstone's legal conception of it and its actual function and working at the time when Blackstone wrote. Our modern Gaius was therefore the creator of those myths and legends about the English constitution which—resting on the foundation of Montesquieu's theory—have been so deeply revered and so widely imitated by the continental Liberalism of the nineteenth century. What happened was that Liberal politicians of the Continent, desiring to secure for themselves that freedom which they saw and admired in England, thought naturally enough to obtain their object by copying English institutions as they found them in the works of Blackstone and Montesquieu. We have shown that the more faithful their copy the more certain would be their disappointment. We have also shown that Blackstone's work was welcomed by English statesmen of the day because it served as a new and valuable support to the existing system. From that time forward the sternest and most unbending of Tories could call the greatest jurist of the age as an expert witness to prove that the political prejudices of the ruling classes were irrefutable and scientific conclusions deduced from a study of English law and constitution.[1]

[1] Blackstone's political philosophy appears in the introduction to his *Commentaries*, particularly in section 2: "Of the Nature of Laws in General." His view of the division of powers between Parliament and King is contained in chap. ii. of Book I. ("Rights of Persons," p. 147, of Christian's edition of 1809). At p. 237 of the same edition he writes of the prerogatives of the King, and at p. 250, speaking of the Executive, he observes that "the King of England is therefore not only the chief, but properly the sole magistrate of the nation; all others acting by commission from, and in due subordination to, him," and compares the concentration of all magisterial powers in the imperator as princeps after the fall of the Roman Republic. It is true that Blackstone's first edition (1765) appeared at a time when George III. had contrived to impose his will upon the nation by means of a corrupt Parliament and a pliant majority. But the best disproof of Blackstone's propositions is that George III. always followed Parliamentary practice in his absolutist aims, and for the simple reason that after three generations of Parliamentary government he could not act on his own initiative. When Blackstone states that the King has prerogative to reject any Bill, to make treaties for himself, and to coin money at his own sweet will, he is only recounting formal rights which the Crown had abandoned in practice after 1688 (cf. Montague, *op. cit.* pp. 58-68).

The next point that occurs in a survey of the Reform movement is the reception accorded in Parliament to the ideas of Radicalism by the ruling classes. And here comes the noteworthy fact that the Whig Party and the Tory Party were almost at one in opposing any change in the existing constitution. The very weakest joint in its harness found enthusiastic eulogists. Burke did not hesitate to declare that the rotten boroughs were one of the great merits of the constitution, because they made it possible for a large variety of social and commercial interests to obtain representation in Parliament, and also enabled young talent to find its way into public life by the nomination of a party leader.[1] It was proved again and again that the idea of Universal Suffrage was neither suited to the public needs nor compatible with the constitution. Indeed Parliament, according to the favourite legal notions of the day, was understood to represent property far more than men. Still there were politicians who favoured Parliamentary Reform on a larger or smaller scale. The elder Pitt, though he feared that reform might enhance them, admitted the evils of the existing system, and was not averse to an increase in the number of county representatives. The first proposals for reform were introduced into Parliament under the influence of Wilkism. From 1771-78 Alderman Sawbridge, a representative of the city of London, moved an annual motion in favour of shorter Parliaments; and in 1776 Wilkes laid before the House of Commons the first detailed plan of reform. He demanded an increase in the number of the representatives of London, Middlesex, Yorkshire, and other of the more thickly populated counties; and he demanded that representation should be given for the first time to growing manufacturing towns like Leeds, Birmingham, Manchester, and Sheffield. In the year 1780 the Duke of Richmond, a member of the newly-founded Radical "society for constitutional information," moved in the House of Lords that universal suffrage, pure and simple, should be the basis of Parliamentary franchise.[2] But the best proof of the strength

Radicalism in Parliament before the Napoleonic wars.

[1] An argument repeated many times afterwards by Whigs and Tories, and revived by Mr. Gladstone in 1858.

[2] The motion was made the very day on which the Gordon riots broke out.

of the Reform movement at that time is to be found in the fact that the younger Pitt, in the first period of his political life, constantly declared for a reform, and even took action in Parliament to promote it. In 1781 he moved for the appointment of a Committee to report on the state of Parliamentary representation—a motion which was only lost by twenty votes. In 1783 he formulated proposals and brought them forward in the shape of a Bill. A hundred seats were to be taken away from the pocket and nomination boroughs and handed over to the counties. As Prime Minister he introduced in 1785 a more modest plan, which would have disfranchised thirty-six rotten boroughs and strengthened the representation of the large towns. But the Bill dealt tenderly with the proprietors of the rotten boroughs, as with a vested interest; for it contained a clause providing pecuniary compensation out of the public funds for their loss of patronage. This provision was fiercely denounced by Charles James Fox, who of all the Whig leaders was most in sympathy with Radical ideas, and Pitt's Bill was lost at its first stage by 248 votes to 174, a minority for Parliamentary reform exceeding any which was to be recorded until the year 1831.[1]

Of the deeper causes which produced this early crop of Radicalism, one was the impression produced in the public mind by the Royal persecution of Wilkes; another, still more important, the American War of Independence. The popularity which George III. enjoyed at the beginning of his reign among all classes of his subjects was converted into an almost universal odium by the disastrous issues of his mischievous policy. Acts which drove Lord Chatham to co-operate with Burke and the Liberal section of the Whigs were certain to be unpopular unless they were successful. But the war against the liberties of Colonial citizens was protracted long after that first outburst of popular enthusiasm, which greets the outbreak of every war, had evaporated; and when the war had run out its costly course to a humiliating end, the English nation had learned through its own sufferings to diagnose its

[1] Cf. Lecky, vol. iv. pp. 60-64; Roylance Kent's *English Radicals* (1899), pp. 19, 20, 87, 88, 155; Harris's *History of the Radical Party in Parliament* (1885), pp. 12-45; and Lothar Bucher's "Essay on the Forerunners of the Chartists" in his *Kleine Schriften*, 1893.

malady. It was felt that the seat of the evil lay in Parliamentary corruption direct and indirect, which enabled the King to govern in defiance of public opinion and to the detriment of the interests of the country without any formal violation of the constitution. A wave of indignation against the Government and the Court Party passed over the whole middle class, and the Whig sections, which had been excluded from power by the personal antipathies of the King, raised their old battle cry that the rights of the people were being endangered by the Crown; only in this case it was not as of old that the rights of Parliament were infringed by the King's prerogative, but that the interests and rights of the people themselves were threatened by the King in Parliament. Hence the Acts which were passed in 1782 to control elections and to prevent contractors sitting in Parliament; hence also the unsuccessful proposals for reforming the franchise which have already been recounted. Hence too the famous speeches of Burke and Fox on the popular side, as well as the appearance of Pitt as a reformer. Their position, however, must not be misunderstood. Burke and Fox (least of all Pitt) were not pupils of the school of Priestley, Cartwright, and Jebb. They had not absorbed the doctrine of natural rights. They were astute politicians playing the party game and working to remain in office or to return to power. It is no reflection upon the sincerity of Lord Rockingham and his followers that they were willing to use the Radical agitation without accepting the Radical faith. They saw in the Middlesex election a good party question. As Burke put it in a letter to Lord Rockingham: "The people feel upon this, and upon no other ground of our opposition. We never have had, and we never shall have, a matter in every way so calculated to engage them; and if the spirit excited on this occasion were suffered to flatten and evaporate, you would find it difficult to collect it again when you might have the greatest occasion for it." To diminish the King's influence in Parliament, to abolish sinecures, and to reform the civil list were the real objects of the Whig as distinguished from the Radical plans of reform.

The outbreak of the French Revolution reduced the Reform party in Parliament to a mere fraction of its former strength. Budding aristocratic reformers became violent re-

actionaries fearful for their power, their property, and their lives. Even as French ideas had revived democratic politics in England, so, on the other hand, the French Revolution and its consequences were responsible for prolonging oligarchic rule in England by nearly half a century longer than it could otherwise have endured. In this last artificial phase the English system of government assumed the characteristics of oligarchy more and more distinctly. The change is most easily discerned in the career of Pitt. The free thinker, who had developed out of the sentimental philanthropy of the eighteenth century a zeal for reforming not only the Parliamentary constituencies but also fiscal policy and the poor law system, turned into a hard and relentless dictator and an unflagging supporter of war against the French Revolution both at home and abroad. In this policy Pitt was upheld by the larger wing of the Whig party as well as by the whole strength of the Tory gentry. Almost all the groups and sections of the governing classes united with furious zeal in a passionate struggle against French ideas in every department of political life.

The French Revolution in England.

Meanwhile British Radicalism, upon which the brunt of this reaction speedily fell, had begun its second chapter. The reformer had turned revolutionary; the agitator for restoring ancient constitutional rights had been converted into an imitator of the Jacobins by the violent remedies which had been enforced across the Channel. Paine's *Rights of Man* applied Rousseau's doctrine with uncompromising directness against the English constitution and won for its author immediate and world-wide renown. Godwin's remarkable book on *Political Justice*, with its attack on the economic basis of existing society—the institution of private property and inherited wealth—may be regarded as the first development of modern communism. But these revolutionary utterances awoke no popular echoes, and found a following only in a small section of the town populations. The ideology of the Revolution was not understood by the English masses. Their deep religious instincts revolted from the new Radicals who (unlike the old) were distinguished by an unfriendly attitude towards Christianity.

The second chapter of Radicalism.

A fear that private property was threatened still further increased the unpopularity of the Jacobins. Priestley's house and laboratory were destroyed by a misguided mob; the revolutionary movement was outlawed by society, and penalised by legislation. It is true that the prosecutions of Radical leaders failed before the Judges, whose regard for law was not to be shaken by political convulsions; but Justices of the Peace and Juries drawn from the upper and upper middle classes made revolutionary demonstrations almost impracticable. Moreover, the military system which prevailed in England during the twenty years' war against Napoleon rendered it easy for the Government to keep under by force all movements directed against itself.[1]

The third phase of Radicalism.

With the battle of Waterloo and the close of the Napoleonic wars there began a new epoch in the inner development of the English constitution and the third phase of Radicalism. The time had come for Radical ideas to ripen into reforms. Long decades of war had brought portentous changes in industrial and social conditions. When the abnormal exertion caused by the strain of active militarism suddenly ceased, and those industries which lived on the growth of the National Debt shrivelled up, there broke out the first great financial and commercial crisis of English Capitalism.

Wars which had enriched the landlord by raising the price of corn had not prevented a much greater increase in the economic and social power of the merchant and manufacturer. Indeed, nothing but an enormous growth of national production and national capital could have provided the governing classes with the means of carrying through their war policy, in spite of the resistance of the oppressed and unenfranchised masses. It is only what Disraeli called "Dutch finance" that makes a long war possible in modern times between two great nations, and by 1815 the mere

[1] We are not concerned here with the ideas which inspired this second phase of Radicalism. The teachings of Paine and Godwin were intended not to reform but to destroy, and are now chiefly interesting as having provoked Burke's *Reflections on the French Revolution* and his *Appeal from the New Whigs to the Old Whigs*, which provided the ruling classes with so many plausible arguments and posterity with such splendours of imaginative eloquence.

interest on the national debt had become an almost insupportable burden, having risen from £9,434,000 in 1792 to £32,645,000 in 1815.[1] And yet, although the burden was thrown by means of an income tax and an oppressive tariff almost entirely upon English industries, those industries had been enabled by a miraculous combination of circumstances to make vast strides. The waste and destruction of capital, the uncertainty of credit, and the general backwardness of continental Europe left England alone, free from invasion and almost free from conscription, to work out new methods and machinery of production, and to step into the position of universal manufacturer. The pressure of taxation at home was relieved by the profits of foreign and colonial markets, and by the monopoly of sea traffic which followed the overthrow of the French navy and the destruction of the French commercial marine. Meanwhile, the population was growing rapidly; that of England and Wales which amounted to about 6,000,000 in 1750, had already doubled in 1820. At the same time the centres of population had shifted, and considerable migrations had taken place from the southern counties to the inexhaustible coalfields and iron, cotton and woollen industries of the Midlands, Lancashire, and Yorkshire. From small towns, Liverpool, Manchester, Birmingham, and Leeds had become commercial capitals. Yet only the first of the four sent representatives to Parliament, and only two possessed municipal charters. The conditions of social and commercial life were being revolutionised, when development was checked (soon to be resumed) by the economic crisis which followed on the cessation of hostilities. The ruling aristocracy, triumphant over Napoleon, promulgated the dogma of a sacred and unalterable constitution with renewed solemnity. But the storm which was to overthrow that constitution was already blowing. Political Radicalism reappeared in strength, no longer merely as the ideology of certain aristocrats or as the creed of a small section of townsfolk, but rather as a new way of regarding the world, a broader point of view suggested and made necessary by the change of society, a set of ideas woven and interwoven

[1] The debt, which amounted to £239,650,000 in 1792, had reached £860,000,000 in 1815.

with the commercial and intellectual interests of the middle classes.[1]

It is not possible or necessary to follow out in detail the course of Radicalism, even after it passed from the world of abstractions into the region of practical politics. Although the ruling classes resisted franchise reform almost to the last moment, and although every possible obstacle was erected against the extension of democratic ideas, yet it was impossible to delay much longer the general acceptance of a new conception of the State. The new political gospel spread like wild-fire, especially when a Radical party (now for the first time so-called) had once organised itself for the express purpose of carrying through Parliament a detailed scheme of reform. Their programme, which included internal administration and local government as well as a thorough reform of Parliament, demands our particular attention; and a very few words will suffice as to the outward features of the movement. The partial triumph of 1832 was mainly owing to the concentration of all available forces upon a single measure—the reform of Parliament. The longer the delay the more deeply was the popular mind impressed by the idea that Government and Legislature ought to be, and were not, representative of the whole nation. And as the importance of English manufactures more and more outweighed that of agriculture, so did the unenfranchised majority become more bitter and formidable, until delay at length proved to have been so far good that reform when it came was Radical.

The partial triumph of 1832.

The final fate of the Reform Bill was decided by the Whigs; for wealth and organisation easily gave them the leadership, when once they were convinced that they could only return to power as reformers.

The campaign of 1830-32 was the result of party egoism—that desire of a political party for self-preservation and power which has so often proved the salvation of the country. The impression produced in England by the July

[1] Cf. Martineau, *op. cit.* pp. xii.-xviii.; and Porter's *Progress of the Nation*, a statistical work of great and almost inexhaustible value; also Spencer Walpole's *History of England*, vol. i. pp. 1-110, 326-425; light is also thrown upon the new doctrines in Bamford's *Life of a Radical* (1846).

Revolution in Paris and the events in Belgium no doubt assisted this combination of Whigs and Radicals. Nor should the influence exerted by the working classes and their instructors be ignored.[1] Of the democratic writers and agitators of that time none was more brilliant or effective than William Cobbett, whose *Rural Rides* and *Political Register* alone would have sufficed to arouse in the starving peasantry and the sweated workmen of the towns a feeling that their misery was due to political causes and might be alleviated by political action. In the words of the *Literary Chronicle* of 1824, Cobbett "did more than any individual of modern times to alienate the affections of the uninformed class of the community from their natural guardians. He cherished the spirit which the French Revolution had engendered, and fanned almost into a general flame every accidental spark of dissatisfaction which the periodical embarrassment of our merchants, during the late war, were the means of lighting up in the manufacturing districts." Cobbett's ready tongue and brilliant pen were supplemented by the indefatigable industry and organising power of Francis Place, who in the years 1824-25 "carried through single-handed"[2] the repeal of the Combination Laws.[3] This repeal was the beginning of progress; but all Place's organising skill could not prevent the Whigs and the middle classes from monopolising the first-fruits of the agitation for Parliamentary reform. It is true that the Act of 1832 paved the way for a democratic franchise; yet the Whig party of the time, led by Lord Grey and Lord John Russell, regarded and commended their Bill not as an instalment, but as a complete and final measure. But their opinions and intentions were thrust aside by the heedless and irresistible logic of events.

[1] The influence of the unenfranchised classes upon the voters was always recognised in populous places, where candidates in their speeches from the hustings would address "Electors and Non-Electors." The custom only died out after the Reform Act of 1867.

[2] In the words of his biographer, Mr. Graham Wallas, *The Life of Francis Place*, p. 197. The book contains much new material and is one of the most interesting contributions to the history of philosophic Radicalism.

[3] Acts of Parliament which had made it an offence for working-men to unite for the purpose of collective bargaining with their employers.

How exclusively the Act of 1832 subserved the interests of the middle classes may be seen by a glance at its provisions. Eighty-six small boroughs of less than 4000 inhabitants were totally or partially disfranchised, and 143 seats were thus set free. Of these, 65 were distributed among 43 new boroughs, and the county representation of England and Wales was increased from 95 to 159. Additions were also made to the representation of Scotland and Ireland. From this time forward all the large towns of the North and Midlands sent representatives to the House of Commons. But far more vital than the transference of seats was the change in the character of the vote. The corrupt system of corporate franchises and select bodies was put an end to for Parliamentary purposes by a clause giving the vote to £10 householders, and the connection between the Municipal burgess and the Parliamentary elector was thereby severed. In most respects the Act of 1832 was a Radical measure. Nevertheless, its effect was to exclude a number of workmen from a few of the more open boroughs. In the boroughs the whole of the middle class received the vote. The county franchise, hitherto confined to freeholders, was extended to copyholders, to leaseholders for terms of years, and to tenants at will paying a rent of £50 a year. The Act, however, by no means broke, though it greatly reduced, the direct power of the aristocracy in the House of Commons. Forty-two pocket boroughs, which survived, with a total population of about 370,000, sent 69 members to Parliament, and there were still many boroughs with from 300 to 500 voters very susceptible to corruption. Secondly, the increased representation of the counties made some amends to the gentry for the extension of the franchise. In fine, the increase of the electorate, though considerable, was not overwhelming. Even after the Act of 1832, scarcely $\frac{1}{24}$ of the population was entitled to vote for members of Parliament.[1]

Policy and provisions of the Reform Act of 1832.

[1] Cf. Taswell Langmead's *Constitutional History*, 5th edition, pp. 608-610, and for an appreciation of the historical importance of the Reform Bill in the growth of English Democracy, cf. Dickinson's *Development of Parliament during the Nineteenth Century* (1895). The Act of 1832 contained a small experiment in the principle of Minority Representation which was to receive a more important development in relation to School Board elections.

The Reform, then, of 1832, though radical, was not democratic; its immediate effect was to add the well-to-do in towns to the ranks of the governing classes. Hitherto, real property had been the decisive factor in politics. Industrial capital now secured a large share of political power; and before long, the feud between the moneyed interest and the landed interest began to disappear, only reviving on occasions when the one required a change in the law which would injure the other. The fight for Free Trade was the last serious cleavage. After that the new plutocracy gradually fell into line and mingled with the old aristocracy. To the general surprise, the Parliament of 1833 was not so very different in character and interests from the Parliament of 1831: it was still essentially an aristocratic body.

In spite of all this, the passing of the Reform Bill in 1832 is one of the great turning-points in English history, and for a reason that may appear paradoxical. Whig protestations notwithstanding, the measure was devoid of principle. It was a compromise, and a compromise that gave certain promise of broader changes in the future. If a ten-pound householder was to have the vote, why not an eight-pounder, or a five-pounder? There was no principle in the ten-pound limit—nothing to take the place of the old principle on which the English Constitution had rested for centuries, and the system of party government for generations—the principle of the inviolability of the constitution. Hitherto it had been agreed that the constitution was to be preserved with all its inconsistencies, irregularities, and inconveniences as a precious inheritance of ancestral wisdom, a mysterious store of national virtues, a perfection of imperfections.[1] A twig might be lopped off, but not a branch. As Canning put it in a famous speech against Radical Reform: "Disfranchising Grampound I will save old Sarum." This conception was now utterly dissolved. The old principle was gone, and there was now nothing but a compromise, a patchwork of opportunism. The Whigs might talk of finality, but philosophers knew, and

[1] Cf. the saying of Coke, that the British constitution was one which the "wisdom of all the wise men in the world, if they had all met together at one time, could not have equalled;" and Fielding's observation, that it "nevertheless hath been mending ever since" (*Amelia*, chap. ii.)

Radicals declared from the first, that no principle could be violated in lowering the ten-pound limit. The solution of 1832 was only a provisional one. It was nothing more than the first stopping-place on the road to democratising Parliament—a road on which there can be no permanent halt until the end is reached.

III

The Radical Programme and Jeremy Bentham.

We now approach more closely those new conceptions of the State and of the organisation and functions of government which grew up about the beginning of the nineteenth century, when the movement for Reform was reaching its practical phase. The new theories, which broadened the Radical Programme, are set out in the writings of a group of men variously known as Philosophical Radicals, Benthamites, or Utilitarians.[1] Jeremy Bentham was the founder of a new political philosophy, and for many years the social and intellectual leader of a remarkable group of scientific politicians. He is the theoretical reformer of English government. His utilitarianism gave his followers a common ground of thought and action. They all looked at things from his point of view, and set out in various directions and on various tasks under his inspiration. Bentham's originality, his comprehension, his exhaustive studies and prodigious industry, and a long intercourse with learning and society, both on the Continent and at home, fitted him to be the master of a new and encyclopædic school of political philosophy. James Mill and his greater son, Grote the famous historian of Greece, Austin the Jurist, Ricardo the Economist, Francis Place the political organiser and wire-puller, and finally, Parliamentarians like Joseph Hume, Burdett, Romilly, and Hobhouse, all drew their political ideas wholly or in part from Bentham. In his teaching, therefore, is to be found a key to the changes which came over the political thought and political institutions of the country during the first half of the nineteenth century. Encyclopædic in its

[1] On Bentham and the Philosophical Radicals, cf. Bowring's *Life*, Bentham's *Works*, vol. x.; and Hill Burton's introduction in vol. i. of the same edition; John Stuart Mill's *Autobiography*; R. v. Mohl's *Litteratur und Geschichte der Staats-wissenschaften*, vol. iii. pp. 595-635.

range, Bentham's philosophy resembles the rationalism of the eighteenth century in its formal and deductive modes of thought, but is distinguished by its universal application of the criterion of utility and its ceaseless contact with the realities of life. Bringing his philosophy to bear upon actual laws and institutions, Bentham worked with a singleness of purpose, a logical persistency, and a courageous hatred of deceit and fraud,[1] which have borne fruit in every department of politics and law.

Utilitarianism.

Men like Bentham, combining rigid consistency and unity of thought with the most logical lucidity, are naturally designed to teach and lead a generation that has begun to lose its faith in old institutions. It is easy to point to writers who anticipated his Utilitarian formula, such as Hume, Hutcheson, and the Italian criminologist, Beccaria, whose works were mastered by Bentham in early life. And Bentham himself relates that it was the perusal of one of Priestley's writings during his student days at Oxford that first reduced his thoughts to shape and order. But that is no reflection on Bentham's originality. His claim is that having accepted with slight modifications Priestley's principle of the happiness of the greatest possible number, he made it the measure of the worth of all human actions and institutions and applied this touchstone to every department of thought and action, so that Utilitarianism became a universal philosophy and criticism of society.

The philosophic value of the Utilitarian principle is not here under discussion; its value to Bentham as a weapon of

[1] This characteristic of Bentham is portrayed very skilfully by Robert von Mohl: "Life may lose its charm and romance in the dry prosaic light of Bentham's philosophy; but there is honesty and truth in his close touch with the realities of life. Shams are dispersed and much evil is destroyed. The analytical skill with which he divides things and thoughts into their component parts is unrivalled . . . and his unities, unlike so many philosophic unities so-called, do not conceal real differences. . . . Bentham's persistent groping after the actual sometimes provokes our amusement as it always deserves our esteem. Nothing pleases him so much as to destroy a false generalisation, and his satisfaction shows itself when he passes from proving the error to ridiculing the absurdity. He is not concerned only with the obstacles that obstruct his path. He will go out of his way to unearth a lie or discover a fraud, particularly when such lies or frauds are detrimental to society" (see R. v. Mohl's *Litteratur und Geschichte der Staats-wissenschaften*, vol. iii. p. 601).

controversy and an instrument of persuasion was unquestionably great. It gave one who called himself a loyal Tory in his youth an intellectual influence over Radicalism which soon amounted to an intellectual supremacy. The Utilitarianism which was turned by Bentham and his contemporaries upon the political and social world was a critical method—keen, logical, and effective. When Bentham, armed with an astounding knowledge of the practical details of English law and government, began to test their utility and taught his followers to do the same, he was forging a kind of *Kritik der practischen Vernunft* for English institutions and public life in an age of almost superstitious conservatism. He used to complain that fashionable satire like Swift's was deficient in its supply of facts and production of evidence, and was himself never content with general maxims and principles. Once he had adopted the Utilitarian formula, he developed it into its logical consequences until, reaching the smallest needs of society and the most trifling problems of everyday life, he was able to elaborate positive proposals for reform.

Bentham on law and government.

The development of Bentham's ideas upon legal and political questions is clearly shown in the order of his writings. He had heard at Oxford Blackstone's lectures on the English constitution.[1] The absurdity of Blackstone's political philosophy and the contrast between the English constitution and Blackstone's notion of it so impressed Bentham that he wrote and published in 1776 his *Fragment on Government*, a critical introduction to the *Commentaries*, which showed Blackstone's ideas of sovereignty to be the products of vicious and illogical thought. It was "the first publication by which men at large were invited to break loose from the trammels of authority and ancestral wisdom on the field of law." A wonderfully acute piece of criticism, it was not merely negative; for while he attacked the

[1] In later life Bentham explained (see *Dict. Nat. Biog.*) that his antipathy to Blackstone was on personal as well as scientific grounds; he could not admire one who was always "eager to hold the cup of flattery to the lips of high station." The *Fragment on Government*, which was variously attributed to Mansfield, to Camden, and (by Johnson) to Dunning, at once gave Bentham a position and introduced him to learned and polite society. Perhaps the intimacy with Lord Shelburne was the most important of its consequences to Bentham.

theory that the citizens of a State are bound together by natural right, Bentham declared that the authority and rights of a State are founded, not on an original contract, but on the general utility of its institutions. Nothing was more hateful to Bentham in political science and jurisprudence than "Metaphysics," a term under which he included such conceptions as Law of Nature, Law of Reason, Natural Rights. He was never tired of pointing out that these conceptions were simply so many contrivances for distracting attention from realities and from investigation into the actual order of things. His sympathy with the French Revolution did not prevent him from writing in words doubly remarkable for a son of the eighteenth century: "The things that people stand most in need of being reminded of are, one would think, their duties; for their rights, whatever they may be, they are apt enough to attend to of themselves."[1] Yet he was a true rationalist in his disregard for the historical and organic element in human institutions and in his reliance upon reason and common-sense to accept his principle of the greatest happiness and his criterion of utility. In his *Principles of Morals and Legislation* he set forth for the first time a broad philosophy of Utilitarianism and made it the foundation of morals and politics. The book has been highly praised, but its practical consequences were not direct, and its theoretical importance is derived from its priority in the sequence of his writings. It is a stage on the road to great practical and philosophical achievements.

From that time forward Bentham's energies were directed to Reform. He sought to build up rational principles of law by submitting existing institutions to the test of utility. He showed that the law of England was utterly devoid of science or system, and attributed its chaotic condition partly to the want of codification—partly to a preponderance of Common Law and Case Law over Statute Law, which he regarded as altogether excessive.[2] He drew up schemes of reform for the

[1] So also in the first chapter of his *Fragment on Government:* "The idea of a natural society is a negative one, the idea of a political society is a positive one. It is with the latter therefore that we should begin" (p. 137 of Montague's edition).

[2] This opinion can only be accepted with modifications. Bentham certainly underrated the evils of bad draughtsmanship and the difficulties of interpretation.

Judicature, the jury system, and procedure. His works on evidence, on civil and criminal procedure, his proposals for the reformation of prisons, and his attacks upon the chaos of conflicting jurisdictions exerted a powerful influence over nineteenth century legislation. Indeed, Brougham, the first of the reforming Lord Chancellors, was a friend and disciple of Bentham.

Bentham was not the man to shrink from applying Utilitarianism to politics in the same practical fashion in which he applied it to the law. Caution, indeed, at first prevented him from indulging in frontal attacks upon the Government. While tyranny was at its height, he would expose a small abuse or memorialise a minister, and would circulate privately opinions which, if published, would have exposed him to prosecution. But all the time he was widening the circle of his friends, and as years went by and the volume of discontent grew, his attacks on the ruling few became more open and vigorous. He called the King "Corrupter-General," and ridiculed Party government. To secure his position philosophically, Bentham conjoined the "principle of self-preference" (*i.e.* self-interest) with the principle of the greatest happiness, and from these two major premises deduced as by a logical process the principle of Constitutional Reform. The desire of each citizen for his own interest would regulate his own vote, and therefore the greatest happiness of the greatest number was most likely to be attained if all voted. Democracy therefore was the form of constitution which Utilitarianism indicated as the best. Bentham's ideas upon the subject are expounded in two of his writings — the *Catechisms of Parliamentary Reform* (1809), and a pamphlet of 1819 entitled *Radicalism not Dangerous*.[1] Both aim at proving that the special interests of the monarchy and of the aristocracy were conserved and protected by the constitution to the grievous injury of the common interests of the nation, and that the only remedy lay in the "ascendancy of the democracy." The supreme power should be in the hands of

His object was no doubt democratic. He aimed at overcoming the reluctance of Parliament to overrule by statute the decisions of eminent judges.

[1] The two writings will be found in the third volume of Bentham's *Works*; cf. Dickinson, *op. cit.* p. 32, and Bentham's *Works*, vol. ix. p. 63.

representatives of the community who should exercise effective control over administration and expenditure. To this end, members of Parliament should be made independent of the Crown and the King's influence, and should be elected annually; for Bentham regards short Parliaments as an "antiseptic" — his own expression — to the misuse by delegates of their authority. Every householder was to have a vote, and the country was to be cut up into electoral divisions according to population. The vote was to be given secretly and in writing. In modern phraseology, Bentham proposed household suffrage, one vote one value, and the ballot.

So much for the constitution of Parliament; but Bentham had long been working at concrete questions of administration, and especially at the great problem of pauperism —a department of State activity in which the failure of the powers and governing capacity of the oligarchy first became painfully and disastrously evident. The Poor Laws and their administration had come to be regarded by the Government merely as a means to prevent discontent from developing into despair and revolution. No other supposition can account for such a monstrosity of misguided sentiment and economic fallacy as the Poor Law Bill introduced into the House of Commons by Pitt in 1796. Bentham's "observations on the Poor Law Bill, February 1797" are said to have been submitted to Pitt and to have "powerfully contributed to the abandonment of the measure." The Bill contained a fair wages' clause framed on the Speenhamland principle. Bentham denounced it as an equalisation of idleness and industry. Then there was a clause which Bentham denominated the Family Relief, or extra children clause, because it provided that the pay of the idler should increase with the number of his children. Of the clause for providing the legal poor with cow-money, he wrote: "Hitherto the danger of profusion has confined itself to income. It now threatens capital . . . the pension during pleasure is instantly converted into a pension during years or during life . . . the spigot was there opened, here the bung-hole." This admirable pamphlet seems to have lain undisturbed among Bentham's MSS. until 1838, when it was found by

Bentham as a Poor Law Reformer.

Edwin Chadwick and published for private circulation.[1] It is of particular interest at the present time in connection with the proposals for Old Age Pensions. Pitt's Bill accepted the principle of "home provision," now better known as outdoor relief, and provided for what Bentham ironically termed "superannuation annuities humanely destined to diffuse a gleam of comfort over the evening of life."

Bentham's contributions to Poor Law Reform went far beyond mere criticism. He was theoretical champion of the so-called Labour Test, and he formulated the principle that the workhouse or nothing should be offered to "sturdy" and able-bodied paupers. He is responsible for many practical proposals which positively bristle with details. The famous panopticon is an almost comical illustration of his passion for working out his theories in the concrete. It may be described as an architectural design for carrying out the Benthamic "principle of inspectability" in private and public institutions of all kinds, but especially in the case of workhouses, penitentiaries, and prisons. These were to be built in a circular form with a conning tower in the centre so constructed that the governor, sitting in the conning tower, would be able to observe unseen all the movements of those committed to his charge.[2]

Of the results of Bentham's theories and proposals upon the Poor Law and the constitution of Poor Law authorities we shall speak in the next chapter, when we shall be better able to judge of their importance. The boldness of his ideas and his obstinate perseverance in a costly experiment will astonish us less if we remember that it was the age of Robert Owen's New Lanark, and of the phalansteries of Fourier.

But we have by no means exhausted Bentham's work as an originator of reforms. The question of a more rational

[1] The "Observations" may be read in vol. viii. of Bowring's edition, pp. 440-461, and the remainder of Bentham's publications upon the Poor Law are contained in the same volume.

[2] There was a good deal in the idea, and Bentham managed to get a Bill through Parliament for an experimental scheme of penitentiaries. But George the Third refused to sign the Bill. Bentham wrote a "History of the War between Jeremy Bentham and George the Third." The Millbank penitentiary, however, which was opened in 1821 for the reception of prisoners, was built on the "radiating" principle.

organisation of the Civil Service, including a reduction in the number of sinecures, with a view to public economy and efficiency, had been brought into the region of practical politics by Burke, and some improvements had been effected before the Napoleonic wars began. Bentham applied himself to the problem in his "Official Aptitude Maximised, Expense Minimised." Indeed, nothing that was of practical moment escaped the test of his Utilitarian standard. He took up education and attacked the curriculum of the middle and upper class schools for the excessive space assigned to the study of Greek and Latin. He assisted in the first attempts of Lancaster and Bell to institute national elementary schools for the masses. And lastly, he gave a great impetus to the Radical movement by providing means for founding the *Westminster Review*. This famous organ of philosophic Radicalism was established in the year 1824, and soon rivalled the Whig *Edinburgh* and the Tory *Quarterly Review*. It would be difficult to exaggerate the value of this addition to the forces of Reform. The remarkable talents which rallied to the new review gave literary *prestige* to a movement which had been contemptuously denounced as a mere agitation of violence and ignorance. It was demonstrated to polite and cultivated society that Radicalism had not only popular support but a philosophic basis.[1]

Bentham's Constitutional Code.

Bentham's later years were taken up with the preparation of his Constitutional Code, the most complete and comprehensive as well as the most mature of all his works.[2] It was begun in consequence of a request from the *Cortés* to provide a constitution and a code of laws for Portugal; and though the specific scheme fell through, Bentham completed and developed his preparatory sketches into what may rightly be regarded as the work of his life, seeing that it contains not only his codes of civil and penal law, but also those ideas on the subject of constitution and administration which he had gradually formed in his mind in the course of studies and discussions extending

[1] For the rise of the *Westminster Review* see Spencer Walpole, *op. cit.* pp. 261-265; and John Stuart Mill's *Autobiography*.

[2] The Constitutional Code takes up vol. ix. of the standard edition of Bentham's *Works*.

over forty years. In the Constitutional Code Bentham seeks to set forth a rational constitution and a rational system of administration in harmony with the principle of the greatest happiness of the greatest number. In spite of many strange pedantries of language and method this great code is a marvel of lucidity. We may criticise the idea of drawing up a system of government to suit all times and all peoples—we may ridicule it as an example of political metaphysics; but the value of Bentham's work remains, and his influence survives in the institutions of his own country. The completeness of detail, the careful elaboration of the constitution, and of the inward mechanism of government, and withal the organic unity of the whole, made a deep impression on the mind of English reformers. So much labour and ingenuity, it was argued, would not have been expended upon unreal and illusory reforms. A systematic view of a modern State in all its complexity with scientific laws and regulations was utterly strange to English thought, steeped as it always had been in empiricism and only inclined to such piecemeal legislation as a particular grievance or a particular occasion might demand. Many anomalies, which still exist in English law and administration, are referable to this particularism. On the other hand, the legislation of the nineteenth century presents many examples of large methodical and systematic schemes of reform, more especially in the organisation of the Courts of Law and of the authorities responsible for internal administration. And Bentham it was who taught the nation that scientific methods and scientific investigations are indispensable if laws are to be made adequate to the needs of a modern industrial society. A great series of reforms followed his death; and of them none were more Benthamic in the best and truest sense than those which built up the modern system of local government in England.

It remains to trace out from the Constitutional Code the main ideas which Bentham desired to apply to the reorganisation of English government; for in these are to be found the germs of the reforms which actually came to pass in the next two generations. The book falls into two parts, the first being a kind of general introduction to the constitutional laws of which the second is composed. In the first part, starting

from the principle of happiness or utility, he deduces the proposition that the whole people should participate equally in government. With the American constitution as his model, he distinguishes constitutional law from other law and marks off the Supreme Constitution (authority) from the Supreme Legislation. Under this second comes Supreme Operation, as he styles the chief executive authority. He supports his argument in favour of a Republican form of government and against a State Church by references to English experience. George III. is adduced as an illustration of the corrupting influence of Monarchy upon the whole organisation of a State. The existing constitution of England is described as a rule of the few over the many—a typical oligarchy.

For whereas "the ruling few" would not rule in the interests of the whole nation, the converse proposition does not hold. So the conclusion is reached that complete democracy is the object of scientific reform; and the size of a modern State adds, as a further condition of democracy, representative government. The people are the sovereign power. Every adult male is a voter and shares in the election of the Legislature and of those who control every organ of executive government.[1]

Bentham's Legislature.

The Legislature is elected yearly, and this again elects the Prime Minister—an idea obviously suggested to Bentham by the constitution of the United States. Government in the abstract appears as a combination of the judiciary and the administrative. Both must carry out the commands of the Legislature, but the first only so long as those commands do not involve a "litis contestatio." For the purpose of forming the Legislature and of carrying on government the whole State is divided mechanically into districts, subdistricts, and these again into bisdistricts of equal size. Bisdistricts are the smallest[2] territorial divisions, and their "Local Headman" is the smallest organ of government. Each district is an electoral division

[1] For the elaboration of these principles so far as relates to central government in this, the most remarkable of all constitutional Utopias, the reader must refer to the codex itself, which covers 662 pages of small type in Bowring's edition.

[2] Though, if necessary, bisdistricts can be divided into trisdistricts, and so on *ad infinitum*.

for the election of a member of the Legislature, and is itself the area constituted for a local Sublegislature. Each subdistrict is a "voting place" (polling district) for the Legislature and an electoral division for the Sublegislature.

Such an arrangement would have seemed comparatively natural and practical to a Frenchman. Its complete disregard of all the local, historical, and individual peculiarities of parishes, townships, unions, counties, municipalities—to say nothing of hundreds, wapentakes, liberties, manorial courts, and the other elements in the constitutional chaos we have attempted to describe—might well make the Benthamic State seem to English administrators and lawyers to be the most absurd and impracticable dream that ever crossed the mind of a philosopher.

Bentham carefully distinguishes the sphere of central from the sphere of local government. The first is under departmental Ministers, twelve in all,[1] whose appointment is made by the Prime Minister and ratified by the Legislature. The subordinate officers of central government are appointed by the departmental Ministers and ratified by the Prime Minister. But the production of a certificate of competence from a public examiner is a condition precedent to appointment. Strangely enough—a concession to the parsimony of less enlightened Utilitarians—Bentham further stipulates that preference shall be given to candidates who are willing to accept a smaller salary than that which has been advertised.

Bentham's system of Local Government.

The system of local government imitates that of central government down to the smallest details. First the Sublegislature corresponds with the Legislature. Then the Sublegislature has its executive organs like the Legislature, subordinated, however, to those of the superior body. With this limitation each Sublegislature has its departments, its officials, its public services, and institutions to supervise and maintain throughout its district for all the proper purposes of local government. What, then, are these purposes? What is the proper province

[1] Namely, for Election, Legislation, Army, Navy, Preventive Service, Interior Communication, Indigence Relief, Education, Domain, Health, Foreign Relations, Trade and Finance. Supervision is the chief duty of each departmental Minister.

of local government? It is coextensive according to Bentham with four departments of State—that of Preventive or Police, that of Indigence or Poor Law Relief, that of the Domains, and that of Education. The elected members of the Sublegislature, as of the Legislature, receive payment from the State.

Lowest in Bentham's hierarchy of government stands the Local Headman. He is elected by the majority of the electors of the bisdistrict or of the trisdistrict, and is an executive officer who acts under the ministers and subordinate functionaries of both the central and local Legislature. But he also executes judicial orders and sentences; and in the narrow field of local government it is his duty to carry out the will of the locality as expressed in the laws or bye-laws of the Sublegislature. So that in the Local Headman in his small sphere all the functions of government as distinguished from legislation are concentrated, just as in the larger sphere of the State they are concentrated in the Prime Minister. Thus Bentham confers upon the Local Headman the functions of General Assistance, Legislature Aiding, Administrative Aiding, Stipendiary Army Controlling, Damage Preventive, Eleemosynary, Hospitality-Exercising, Judiciary Aiding, Communication Aiding, etc.—an analytical statement which is intended to exhaust the whole field of inner administration. The democratic principle that terms of office should be short applies to the Local Headman; and so too does the principle of payment of members. He has the privilege accorded to other officers of the Benthamic State of nominating a Deputy. A remarkable creation indeed is this Local Headman, suggested no doubt in part by the French Maire. "In the French system," writes Bentham in the preliminary observations of Chapter XXV. on Local Headmen, "the sort of functionary whose logical field of authority is most diversified, and at the same time his local field narrowest, is styled *Maire: maire* from the Latin major, whence also the English mayor. But if, to a functionary to whom are confided the functions that will presently be seen, a name were given to which a set of ideas, comparatively so narrow, stands associated, a continually recurring train of misconceptions would be the result. As to the English system, no functionary under this name (Mayor) does it pre-

sent in any spot within the territory, except here and there one, among those which several centuries ago were covered with buildings." Then he argues that if such a functionary is needed where the houses are dense, so much more will he be needed where they are scattered. For of executive or administrative work it may be said that "the facility will be as the density; the difficulty as the thinness." Moreover, he goes on to say, "to the office of the functionary called *mayor*, there are in the English chaos about as many different functions attached as there are towns in which a functionary of this denomination is to be found." [1]

Of Bentham's proposals for organising a State the above outline, slight though it be, must suffice. It is impossible, without turning to the original, to gain any idea of the completeness of Bentham's Constitutional Code or of the wonderfully logical power with which he marshals and groups his particulars. But our concern is with Bentham as an originator of reform, as a constitutional innovator. As such he may be said to have introduced four more or less original conceptions into the theory of the functions of a State and its organisation.

Bentham as an originator.

1. He attempts to solve anew the problem of the relations between local and central government. In his system the Legislator is omnipotent. His local "field of service" is the State, his logical "field of service" is the field of human action. Physical necessity forces him to trust the executive to ministers dependent on a Legislature which represents the will of the whole nation, and to sub-ministers dependent on a Sublegislature which represents the will of the local community. But the central Parliament and its organ the Ministry always preserve a supervisory control over local administration. Here, then, is formulated the principle, novel to the historic constitution of England, that there is no province or function of public administration in which a central government in its administrative as well as its legislative capacity is not entitled to interfere. The new principle of "inspectability" is expressed on the one hand by the supervisory control of the Ministry, on the other by the subordination of the Local

[1] See Bentham's *Works*, vol. ix. p. 613 (Constitutional Code, Bk. II. chap. xxv. sec. 1).

Headman. The Minister at the top controls the Headman at the bottom of the official ladder. The light at the centre radiates to the very circumference of the State. In the next chapter it will be shown how potent a force this new idea of central administrative control proved in the reformation of English local government.

2. Bentham recognises that there is a sphere of local interests, and that these interests must be looked after by the inhabitants of each district, though he regards them—and here his system is in direct contradiction to the historical development of English institutions—as belonging to a secondary and subordinate branch of administration. Another great change which Bentham introduced into English habits of thought was the idea that representative democracy for Parliament involves representative democracy for local bodies. Even his centralisation, if it requires bureaucracy, is founded upon democracy. If the relation between the Headman and the Minister remind us of that between the French *Maire* and the French central government, it must be remembered that Bentham had taken care to anglicise the French Prefect. It would seem that he was influenced in this matter by American law, and the relation of the State Legislatures to Congress. It was Bentham, in fact, who taught the Radicals to be thorough democrats—to regard the reform of Parliament as only a step towards the realisation of democracy in every department of government. He is the author of the idea of *democratic administration* in both central and local government.

3. Bentham taught his disciples, as one of the axioms of true democracy, that the territorial bases and divisions of government should be the product, not of history and accident, but of the actual needs of existing society—in short, that the country should be planned out into administrative districts by the rule of utility or convenience. At the same time, Bentham's institution of a Local Headman teaches the desirability of concentrating the whole administration of a district in the hands of a single executive organ, although it must be admitted that his love of differentiation led some of his practical, but unintelligent, followers to multiply local authorities as well as central departments. This misinter-

pretation of Bentham has had serious consequences, but the error is already in process of correction.[1]

4. Bentham demanded that the Civil Service should be governed by economy and efficiency, and that technical competency should be the ground of appointment. He returned to the charge again and again. In that golden age of sinecures and patronage he wrote of open competition for public appointments, and familiarised the governing classes with the idea that the paid official of the local, as well as of the central, government should be a trained expert, equipped with all the technical knowledge necessary for his particular department. Legal officials should understand law, medical officers medicine, and so on. It is difficult now to realise what a startling revelation this was to the contemporaries of Bentham. No doubt the neglected condition of the field which he began to plough with such industry, science, and art accounts to a large extent for the fruitfulness of his labours. But much must be allowed to the intellectual force and originality of the man whose doctrines overcame in the course of two generations the spell of tradition, the self-interested opposition of the governing classes, and even the hardy conservatism of the English character. German philosophers, indeed, have neglected Bentham. Even Robert von Mohl, who alone appreciates his genius, thinks Hill Burton's eulogy absurdly exaggerated, because Hill Burton declares that nearly all the great reforms of the first half of nineteenth century England were originated by Bentham. The opinion of Sir Henry Maine[2] might be quoted in support of Hill Burton's proposition, which is indeed strengthened by publications of a later date. But the best and most conclusive evidence of all is to be drawn from a comparison of Bentham's teaching with the legislation which followed it. To that legislation we now turn.

[1] Thus the Highway Boards and Burial Boards and the different Local Boards in the same urban area have practically disappeared. A more questionable change—the substitution of county, borough, and district councils for School Boards, which has been effected by the Education Act 1902, marks the disappearance of another *ad hoc* authority.

[2] See Maine's *Ancient Law*, pp. 78, 79.

CHAPTER II

MIDDLE CLASS REFORM OF LOCAL GOVERNMENT

I. *The Reform of the Poor Laws*

Consequences of the passing of the Reform Bill of 1832.

With the passing of the Reform Bill in 1832 the political predominance of the middle classes was substituted for that of the aristocracy, and the new rulers soon began to write their interests and ideas upon the Statute Book. Such legislation was indeed natural and inevitable. Changes of constitutional law which produce no alteration in government and administration are as useless as the echoes of an empty political phrase. The middle classes of England were not likely to be satisfied with the control of Parliament. The Act of 1832 was regarded as the instrument rather than as the end of reform. And the first and most important task of the first of the middle class Parliaments was to bring about such a change in the structure and functions of inner administration that they would harmonise with the new composition and the new ideals of Parliament. Not that this task was consciously imposed by the new electorate and undertaken by their representatives. It is rather to be ascribed to the working of a hidden law of politics, a law of universal operation, but at no time or place more evident than in the recent history of England. Each success of the democracy in widening the Parliamentary franchise has been closely followed by a period of administrative reform, during which democratic ideas are transferred from the formal sphere of political rights into the actual service of the State and the practical work of government.

Hence the thoroughly organic character of English democracy. After each reform in Parliamentary machinery, in 1832, and 1867, and 1884, there has been time left (and well employed) for bringing the subordinate public authorities and services, national and local, into line with Parliament. To confine our attention strictly to the province of internal administration or home affairs, the Reform Act of 1832 was followed by reforms in the Poor Laws and in Municipal Corporations, which turned the practical notions of Radicalism to the practical purposes of government. That of 1867 was followed by Mr. Gladstone's great Reform Ministry, which set up a national system of education and made many other important and democratic changes in the public service.[1] The Reform Act of 1884 extending the franchise to agricultural labourers was followed by the complete democratisation of local government in the Acts of 1888 and 1894. Thus administrative reform follows upon constitutional reform, and the years 1832, 1867, and 1884 divide our subject into three periods. Not that these great steps involve great or startling discontinuity. In local, as in central, government the new ideas and forms have grown up on historical ground. Different as the Parliament of to-day is from that of the eighteenth century, or as that of the eighteenth was from that of the sixteenth century, yet it is still the same English Parliament. Plenty of old forms and traditions remain, and all the changes brought about during the nineteenth century have been effected by the same customary or statutory processes which ruled the earlier developments. And as with Parliament, so with the departments of government and the subordinate authorities. Not only have many stones of the old been built into the new buildings, but even of the ground plan many parts remain almost unaltered.

The English democracy has always treated the constitution as a precious inheritance, has shrunk from novelty, and has only adopted changes when convinced of their utility or necessity. This it is which makes so necessary a historical treatment of the changes we are about to describe in the

[1] Such as the abolition of purchase in the army. Bruce's great Licensing Bill unhappily failed.

inner administration. About the time when the early representatives of Radicalism began their attack on Parliament and the outer part of the oligarchic system, its inner props were already beginning to show signs of weakness and decay. But local institutions require local and detailed criticism as well as a minute knowledge of law and administration. What is intolerable in one place may be tolerable in another owing to a difference not in the functions of the office but in the character of the officer. Consequently problems of internal administration can scarcely ever offer good material for popular agitation. Administrative grievances are too petty and confined to appeal to the national imagination. Only when government has become openly so incompetent and corrupt that the evil results are patent to the meanest understanding is it possible to enlist popular interest and indignation. But this condition was fulfilled in England at the beginning of the nineteenth century; and Parliament soon ceased to monopolise the attention of the Reformers. The press began to inveigh against particular institutions and particular abuses of administration. William Cobbett, one of the first of the great popular journalists, roused the masses against the cruel illegalities perpetrated by country Justices. Men were taught in a hundred pamphlets to inspect constitutional evils from the standpoint of common sense and individual experience; and in a few years' time the teachings of Bentham and his school had been so widely circulated by these means as well as by the speeches and motions of their friends in Parliament that the public mind had become familiar with systematic criticism of government and disposed to accept a thorough scheme of reform. Indeed, the maladministration had become so appalling that Tory governments time after time brought forward remedial measures which served to attract attention to the real evil, though more often than not they inflamed the discontents which they were intended to abate.[1]

The breakdown of the oligarchic system.

The failure of the machinery of government and of the classes to which it was entrusted was felt in almost every branch of administration. But the disease had spread furthest and with the most fatal consequences in the department upon

[1] Thus proposals to amend the Poor Laws engaged the attention of Parliament in almost every session between 1780 and 1834.

which the Elizabethan legislature had rested the whole system of local government. It was through the operation of the Poor Laws that the nation, shortly before the passing of the Reform Bill, found itself on the verge of bankruptcy and ruin. The statute of Elizabeth had been followed by less wise measures. In 1691 an Act[1] was passed to lessen "the many inconveniences" which, said the preamble, "do daily arise by reason of the unlimited powers of the overseers, who do frequently upon frivolous pretences, but chiefly for their own private ends, give relief to what persons and number they think fit." Accordingly the authority of the Justice was strengthened in order that (to borrow the words of a recent writer) society might be protected "from the encroachment of the pauper and from the weakness or dishonesty of the overseer."[2] Five years later the Act was strengthened by another[3] enabling Justices of the Peace to abridge or withdraw the relief enjoyed by "idle, sturdy, and disorderly beggars" of both sexes. These provisions, intended to be exceptional, soon led to abuses. Persons would apply to Justices of the Peace and obtain relief "upon false or frivolous pretences" and "without the knowledge of any officers of the parish."[4] The Act passed to remedy the remedy seems to have been inoperative. At any rate the whole administration of the Poor Law gradually passed from the parish into the hands of the Justices until in the latter half of the eighteenth century the Justices were practically supreme. A still more serious evil had been growing up. The labour test prescribed by the Elizabethan law was falling into disuse, and it had become customary to give outdoor relief in money payments to the able-bodied and infirm alike without distinction. It is true that at the beginning of the eighteenth century workhouses were invented, and many curious and interesting experiments

Maladministration of the Poor Laws.

[1] 3 and 4 William and Mary, cap. 11.

[2] Mr. Thomas Mackay in his valuable supplementary volume (vol. iii.) to Sir George Nicholl's *History of the English Poor Law.*

[3] 8 and 9 William III. cap. 30.

[4] See the preamble to 9 Geo. I. c. 7, which attempted to check this abuse by giving the parishioners and Overseers a certain control over the Justices, so that from that time forward there were in the eyes of the law three authorities to look after Poor Law relief controlled by and controlling one another. The same Act empowered parishes to purchase or hire workhouses. See Mackay, *op. cit.* p. 78.

made under the Act of 9 George I. c. 7, already referred to.[1] But only a few of these workhouses were managed on really sound principles. The extravagant hopes of enthusiasts were seldom realised, and the passing of Gilbert's Act[2] sixty years later marks another falling off in the wisdom of Parliament. This Act, which vested all powers of giving relief in the Justices and a Board of Guardians appointed by them, provided that only impotent persons and children were to be sent to the Poorhouse. Those who were willing to work but unable to find work were to be employed and paid by the Guardians at suitable work in their own parish. Thus the workhouse test was destroyed, and outdoor relief was established as the rule of Poor Law administration by the sentimental humanity of the time. The manufacture of pauperism by regular methods and on a national scale had begun. The industrial revolution exposed, aggravated, and accelerated a danger which might for a long time have been kept within limits and concealed by the old conservatism and economic stability of English society. It would indeed have needed a perfect Poor Law and a perfect administration to have saved the country wholly from the troubles which broke upon her in the first two decades of the nineteenth century. But the law was not good and the administration was much worse, for it was in the hands of the Justices of the Peace, drawn from the landed gentry, and embodying that spirit of autocratic dilettantism which marked the internal government of England from 1800 to 1830. The glaring abuses of Poor Law administration may be ascribed partly to incompetence, partly to a combination of tyrannical and patriarchal motives.

The magistrate who would sternly suppress a popular demonstration was ready to be the patron of the cringing poor, and even to supplement wages out of the rates, a device which appeared to obtain some support from the classical economists.[3] The Berkshire magistrates thought that it would be well to fix

Rates in aid of wages.

[1] While it remained in force, says Mr. Mackay, it proved useful and enabled the overseers and parish authorities to introduce a form of workhouse test. Mr. Mackay gives a variety of illustrations, pp. 78-86.

[2] 22 Geo. III. c. 83.

[3] And especially from Ricardo's contention that wages (the market price of labour) tend to be about the sum which will provide a bare subsistence to the labourer.

this minimum, and accordingly they compiled a table to show magistrates and overseers "at one view what should be the weekly income of the industrious poor," the scale varying with the price of the gallon loaf and with the size of the labourer's family.

This sliding scale for Poor Law purposes was adopted on 6th May 1795, at Speenhamland, and the principle was so widely adopted or emulated in other counties that this resolution of a county bench became known as the Speenhamland Act. Thus poor rates came to be employed regularly to supplement wages as well as to support the infirm poor. The consequences were soon seen and felt. So far as can be ascertained the sums raised for the relief of the poor amounted in 1698 to £819,000. The introduction of workhouses combined with careful administration had reduced the sum to £619,000 in 1750, a very striking reduction, considering the growth of population, although of course Walpole's policy had maintained peace and encouraged prosperity. But in 1776 the poor rates had risen to £1,521,000, and in 1785 to £1,912,000. Then they began to advance by leaps and bounds. In 1813 the burden was £4,267,000, and it rose uninterruptedly until it reached its maximum height of £7,870,000 in 1817.[1] But the full meaning of the figures was not known until 1834, when the Royal Commission appointed by the Reform Ministry of Lord Grey issued its first report.[2] It was found that throughout the country, whether a fixed scale had been adopted or not, employers of labour had come to regard the rates as a grant in aid of their wage funds. They were able to reduce payments below the minimum necessary for subsistence, leaving the workman to get the remainder made up out of the rates. A system which supplied cheap labour was naturally in favour with employers, and the practice was supported by a theory that low wages are a necessary condition of successful industry. The first to raise the alarm were people living on fixed in-

[1] Cf. Fowle, *Poor Law*, pp. 61-62. The population was then only about 11,000,000. In 1871 the burden was about the same for about double the population.

[2] Vol. xxvii., *P. P.*, 1834, reprinted by order of the House of Commons in 1885 (Eyre and Spottiswoode, 1894); cf. Martineau, *Introduction to the History of the Peace*, pp. 82, 879; and Mackay, *op. cit.* chaps. iii. and iv.

comes, and soon the middle classes generally began to recognise the mischief. In some places rents as well as profits were almost swallowed up in rates. Landlords began to pull down cottages in order to get rid of paupers. But nothing could prevent the growth of a pauper population, while the Allowance system, which proportioned relief to the number of children, encouraged reckless marriages. The working population sank lower and lower into physical and moral degradation. The traditional thrift, independence, and industry of the working classes seemed in a fair way to disappear. It became more profitable for a workman to be a pauper than to remain independent.

The effects of Poor Law relief were aggravated by the Law of Settlement and its administration. A statute of Charles II.[1] gave power to the Justices to order any person who came to settle in any parish in a tenement of less than £10 a year to be removed to his place of birth (or legal settlement) within forty days after his arrival on complaint being made by the overseers or churchwardens. Thus the emigration of superfluous labour from over-populated districts was checked and labour was artificially prevented from finding its natural markets.[2] The Law of Settlement was a good instance of truly parochial legislation; the theory on which it rested was that each parish should support its own poor and be able to exclude the poor of other parishes.[3] A state of things involving so much moral depravity and economic misery required heroic remedies. The new Commissioners proved equal to the emergency. Their inquiries had been thorough and their recommendations went to the root of the evil. To put an end to indiscriminate outdoor relief; to make the workhouse or nothing the choice of the pauper, save in exceptional cases; to alter

The Law of Settlement.

Recommendations of the Poor Law Commissioners.

[1] 14 Car. II. c. 12.

[2] Cf. *First Report of the Poor Law Commission*, 1834, pp. 57, 58, 61, 63, 66-70, on the consequences of the system to employer and workmen; on the incompetence of the old organisation, and especially of the Justices, pp. 89-125.

[3] Adam Smith said that in his day there was hardly a poor man in England of forty years of age "who had not in some part of his life found himself most cruelly oppressed by this ill-contrived law of settlements."—See *Wealth of Nations*, Book I. chap. ix.

the Law of Settlement—these were the great Radical reforms proposed by the Commissioners and soon to be placed on the Statute Book. These proposals, however, only struck at the legal as distinguished from the administrative evil. It is with the reform of the authorities which administered the law that we are particularly concerned; and this was a subject which the Commissioners themselves regarded as of the first moment. In polite but firm language they proved to a demonstration that all other reforms would be unavailing unless a change were made in the structure of Poor Law administration. If the intention of the Elizabethan statute had been defeated the Justices were mainly responsible, and must bear the chief blame for the catastrophe. But for their complete political and administrative autonomy and the utter want of central control such a development of mischief would have been impossible. This finding of the Commission, which left the way open to reform, was inspired by Chadwick,[1] to whose ability, consistency, and energy the passing of the Bill (1834) and its consequent administration afterwards were also very largely due. Chadwick was a true Benthamite and devoted himself during a life scarcely shorter than his master's to carrying the Benthamic theories into English administration. Previously to his connection with the Commission, Chadwick published articles urging the necessity of placing a check upon the corruption of local authorities by means of administrative centralisation. Join-

Edwin Chadwick.

His plan of Reform adopted.

[1] Edwin Chadwick, born at Longsight, near Manchester, in 1801. He was introduced by John Stuart Mill to Nassau Senior, and by him appointed Assistant Commissioner. His report, says Senior, gave more assistance than those of the rest of his colleagues put together, and contained the gist of the recommendations afterwards adopted. In 1833 he became a member of the Commission and was responsible with Senior for the final report. He contributed to the *Westminster Review*, became a disciple and friend of Bentham, and lived in the philosopher's house during the last year of his life. The confidence which the young man inspired in the old may be inferred from the offer (not accepted) of a provision which would have enabled Chadwick to devote his life to the exposition of Benthamism (cf. Mackay, *op. cit.* pp. 37-42, and *passim;* also article on Chadwick in *Dictionary of National Biography*). For Chadwick's ideas on administration, see his own book published in 1885 on the evils of disunity in Central and Local Administration; and Richardson, *The Health of Nations, A Review of the Works of Edwin Chadwick*, London, 1887, 2 vols.

ing the Poor Law Commission in 1833 he soon persuaded Nassau Senior, the famous economist, and Sturges Bourne (who represented the older school of Poor Law Reformers) to adopt his own plan, which, so far as related to the new organisation, may be summarised under the following heads:—

(1) The creation of a new Poor Law district to take the place of the parish, and of a new organ of Poor Law administration to take the place of the overseers and Justices of the Peace.

(2) The principle upon which the Union was formed was utility, *i.e.* geographical and administrative convenience. It was only historical in so far that the parish was accepted as the unit of formation.[1] The plan usually adopted after the passing of the Act was to make a market town the centre of a union, and to group round it the neighbouring parishes which used the market. The Guardians could then meet and transact Poor Law business on the market day—the day on which private business would naturally have brought them together.[2] According to Nassau Senior, Chadwick was the "sole author" of that part of the report which dealt with the union of parishes. Unions were recommended on two main grounds: (*a*) *the economy of large operations*, including centralised management, fewer but better paid and more efficient officers, and larger contracts offered for public competition; (*b*) *the better classification of paupers*, the advantages of which they compared with those of the subdivision of labour in the sphere of competitive enterprises.

This idea of increasing the area in order to classify the objects of administration was known under the formula, "aggregation for the purposes of segregation."

(3) The Poor Law authority which ruled over the Union was called the Board of Guardians. The Justices of the

[1] The parish was retained as the financial unit—the Overseers continuing in office for rating purposes.

[2] See sec. 26 of the Poor Law Amendment Act, 1834 (4 and 5 Will. IV. c. 76), by which Commissioners were given power to form parishes into unions as they thought fit—each parish, however, still paying for the relief of its own poor. Mr. Mackay at p. 164 quotes from a written report prepared by one of the Assistant Commissioners, recommending the formation of a union of twelve parishes with Rye as the centre. The writer argued that such a union would be geographically convenient, presented no legal objection, and was favoured by all the ratepayers, rural and urban, of the parishes affected.

Peace acting in the district were made Guardians *ex officio*. The rest of the Board was elected by voting papers by qualified ratepayers, the larger ratepayers having additional votes.[1]

(4) A Poor Law Board of central control called Commissioners was established in London with large powers over the local authorities. Its duty was to enforce the carrying out of the Poor Laws by issuing rules, orders, and regulations for the management of the poor, the formation of unions, the government of elections, etc. For these and similar purposes, assistant commissioners and inspectors were appointed to watch the local authorities and to report to the Board.[2]

(5) The executive work was confided to paid officers appointed by the Board of Guardians, but responsible also to the Commissioners. The Commissioners were empowered to dismiss an officer without consulting the local authority, in order that the principle of direct central control might be strictly carried out. The only case excluded from the revision and supervision of the central authority—and left entirely to the discretion of the local authority—was the actual giving of relief by the Guardians to the individual applicant, always provided that such relief did not offend against Parliamentary statute or departmental regulation.

(6) The introduction of an audit under the direction of the Commissioners is another highly important reform. The duty of the auditors was to overhaul the accounts of Poor Law authorities half-yearly and to disallow or "surcharge" improper expenditure. For some time this supervision of local expenditure was imperfect;[3] but in 1840 the salaries of Poor Law auditors were made a charge upon the State, and a sound and effective system of financial control was gradually built up by later legislation. Other financial abuses were suppressed by sec. 77 of the Act, which provided that no person concerned in administering the Poor Law should enjoy

[1] See for details the Poor Law Amendment Act, 1834, secs. 38, 39, 40, 41.

[2] See secs. 1-18 of the Poor Law Amendment Act, 1834. The Commissioners were three in number, and were appointed in the first instance for five years. Chadwick was the first secretary.

[3] The Auditors were at first both appointed and paid by the Guardians, *i.e.* by the accounting parties—a system still prevailing in boroughs under the Municipal Corporations Act.

Poor Law contracts, and by secs. 49-51, which provided that supplies should be purchased by public contract in accordance with the regulations of the Commissioners.

Bentham's triumph.

The triumph of Bentham's ideas in that great piece of constructive legislation which followed the report is obvious and unquestionable. But the triumph seems still more complete when we consider the manner in which the Poor Law Commission fulfilled the preliminaries required by Bentham for scientific legislation. In the first place, they adopted Bentham's plan of classifying and specialising the work. After constituting themselves the central authority, the Commissioners proceeded to divide up the whole field of inquiry into districts, assigning an assistant Commissioner to each. Each Assistant Commissioner then investigated the conditions in his own districts, wrote a report, and submitted it to the central Commission in London. But, as we have said, the report itself and the Act are almost equally Benthamic. Bentham's principle that the life of paupers should be less comfortable and less attractive than that of the industrious poor is embodied in the Workhouse Test. The creation of a central authority with control over the local administration, the formation of Poor Law areas by reference to convenience and topography instead of to tradition and history, the recognition by the Commissioners of the principle that executive officers should be paid, and the provision that the local authorities should be elected by the inhabitant ratepayers of the district, are all borrowed or adapted from the "Constitutional Code."

The passing of the Bill, 14th Aug. 1834.

In such a fashion was one of the most important parts of the machinery of internal administration overhauled and reconstructed in accordance with the principles and theories of the Utilitarian philosopher. No such far-reaching and systematic reform had been ventured in England since the Act of Elizabeth. In 1834 and in 1601 the Legislature sought to treat the problem as a whole instead of merely trying to counteract a particular abuse. All honour is due to Chadwick and Nassau Senior, as well as to a Cabinet and a House of Commons which had the courage to be convinced. The greatest difficulties of all were felt in regard to the erection of a central authority, more

particularly as it was proposed to invest it with the character of a court of record and large discretionary powers. At a meeting of the Cabinet on 22nd March, attended by Nassau Senior, and described by Mr. Mackay in Chapter V. of his work,[1] the Duke of Richmond objected to a provision which would give the Board a certain immunity from legal proceedings, as well as the power of committing for contempt of Court. The Cabinet overruled the objection for the time; but undoubtedly the whole scheme of centralisation sounded strangely in the ears of English statesmen; the combination of a department of Government with a Court of Record suggested *Droit Administratif;* and it is not astonishing to find that the obnoxious clause was materially modified before it appeared in section 2 of the Poor Law Amendment Act 1834.[2] By way of a further concession, however, to doubters and opponents, the Poor Law Commissioners were appointed in the first instance for five years only. This term was subsequently extended to 1847, when a similar Board was substituted under the new style of "Commissioners for administering the laws for the relief of the poor in England,"[3] with a President who was entitled to sit in Parliament. The Bill passed the House of Commons with little opposition, so deep was the impression produced by the report of the Commissioners. Brought in on 17th April, it was read a third time on 1st July by a majority of 187 to 50, and passed by the House of Lords with certain amendments, most of which were accepted by the Commons.[4] On 14th August 1834 the Bill received the royal assent.

[1] The chapter is based upon Nassau Senior's manuscript notes.

[2] Sec. 2 provides that the Commissioners may sit as a Board with power to summon and examine witnesses on oath and to call for the production of papers, but that "nothing herein contained shall extend or be deemed to extend to authorise or empower the said Commissioners to act as a Court of Record" or to inquire into any title.

[3] Between 1834 and 1847 the following Acts were passed to continue and amend the system introduced by 4 and 5 Will. IV. c. 76; 5 and 6 Will. IV. c. 69; 6 and 7 Will. IV. c. 107; 7 Will. IV. and 1 Vict. c. 50; 1 and 2 Vict. c. 25; 2 and 3 Vict. c. 83, 84; 3 and 4 Vict. c. 42; 5 and 6 Vict. c. 57; 7 and 8 Vict. c. 101; 10 and 11 Vict. c. 109—the last-named being the Act of 1847 above referred to.

[4] The debates in both Houses are worth reading; a partial summary will be found in Chapter VI. of Mr. Mackay's book. Lord Chancellor Brougham attacked the principle of the Elizabethan Act in a characteristic speech which

But the apparent ease with which the Bill passed through Parliament is no measure of the opposition which it aroused in the country, and especially in the Press. The declamatory indignation of Cobbett and agitators of his stamp against robbing the poor man of his rights was supported by Walter, the proprietor of the *Times*, who used the immense authority of that organ to appeal to the sentimental philanthropy of the upper classes. The three Commissioners were nicknamed "the three Pashas of Somerset House" or the "Pinch-pauper Triumvirate." A supporter of the Bill, apparently Chadwick, was delicately alluded to as "a sucking Solon of the Benthamite brood." Vestry meetings in various parts of the country were got up to oppose the Bill, and every arsenal of superstition and ignorance was ransacked to provide reasons against reform. A small section, however, of the better organised workmen, instructed and led by Francis Place, saw that the measure was framed in the true interests of labour, and that nothing less would avail to avert national ruin. Nevertheless, the middle classes obviously supplied the motive power necessary for the passing of an Act which was essential to their preservation; and this conspicuous example of the economic value of political power undoubtedly contributed to the growth of that great movement of English workmen, which collapsed in the revolutionary chartism of 1848, but rose again and triumphed in the reforming Liberalism of 1867 and 1884.

Opposition in the country.

The Commissioners set to work without delay to plan out the areas, to create the new Poor Law authorities, and to administer the new law. An unbroken row of official publications from the year 1835 provides rich material for measuring the appalling magnitude of their task and the wonderful success of their achievement. But the figures speak for themselves. The average annual expenditure on the relief of the poor in the five years preceding the Act of 1834 was £6,754,000, and in the five years succeeding the Act, £4,567,000. That alone convinced public opinion. There was never any serious reason

The period of probation.

went to denying the right of the poor to be relieved at all, and exposed him to a sharp attack from Cobbett, who was a member of the Reformed Parliament.

to fear a reversion to the old state of things. The Act of 1847, which gave the Poor Law Board a President, and the Government a new Minister, made the administration of the Poor Laws a recognised department of central government. An account of the later development of this department must be postponed. It is enough, in concluding this portion of its history, to emphasise the importance of the work done by Chadwick, the first Secretary, and the Assistant Commissioners. Not only is the success of the great experiment due very largely to their skill and zeal; but they may also be said to have been the instruments which recommended the system of inspection (Bentham's principle of inspectability) to the English people, so that it gradually extended to all branches of the inner administration until it has become the characteristic feature of English central government and an object of foreign imitation. Nothing but proved utility could have overcome the instinctive aversion of Englishmen from such an institution. Such a proof was afforded in innumerable cases, thanks to the energy and capacity of the Assistant Commissioners and of the general inspectors who succeeded them.[1]

II. *The Reform of the Municipalities*

Local authorities and their constitution in 1833.

The second of the great reforms initiated by Lord Grey's Ministry was the reorganisation of the municipal boroughs, a problem which presented difficulties of inner administration scarcely less vital than the amendment of the Poor Laws. It was, in truth, only part of a much wider problem. The laws relating to local authorities[2] in England possessed neither unity nor solidarity. The historical development of English

[1] For the popular agitation against the new Poor Law, cf. Tildsley, *Die Entstehung und die ökonomischen grundzüge der Chartistenbewegung*, Jena, 1898, pp. 21-30; Graham Wallas, *Life of Francis Place*, pp. 366-373; Mackay, *op. cit.* pp. 233-256; and the same writer on the passing of the Bill, pp. 157-200.

[2] *Gemeinderecht.* What a pity that the English language possesses no corresponding word except Municipal Law—a term unfortunately stolen by the Jurists for another purpose. I hope, however, that in occasionally rendering *Gemeinderecht* "municipal law," I shall run no risk of confusing the reader's mind (F. W. H.)

towns and villages had promoted not coherence but diversity of municipal law. There existed no such thing as a national *Gemeinderecht*, either in the mind of the Jurist or in the popular imagination. If problems of communal organisation were rarely treated from a general or public standpoint, they were never so treated as a whole, but under three distinct heads corresponding to three dissociated and, as it seemed, irreconcilable organisations—the parish, the municipal corporation, and the county. The corporations were but isolated patches variegating a network of parishes which spread over the whole country. As units of administration both town and parish were subordinate in power and dignity to the county and the county Bench of Justices. But the town is not to be confused with the parish. Town and parish are the two English types of local community. Each has its distinct characteristics and organisation. The parish, as we have seen, rested largely on common law rights as well as on the Elizabethan statute. But the constitutions of towns differed one from another in accordance with their charters of incorporation, which had been acquired at times and under conditions so various. A cluster of privileges and customs, venerable and valid, individualised each town and clothed it in its peculiar garb of laws and rights. No statute had ever defined a municipal corporation. In 1833 you could hardly have found two municipal corporations of the same species; and there was no genus, or none known to the Jurist.

The incorporated towns.

The constitutions of English towns in the first five-and-thirty years of the nineteenth century are not unlike those of German towns in the sixteenth and seventeenth before the incursions of the territorial sovereigns and their centralising absolutism. In the Holy Roman Empire at that period almost every town had its own organisation and its own sphere of autonomy and jurisdiction. The difference is that every English town, without exception, had always been regarded as a creation of the State, a legal entity born of a power vested in the Crown. Moreover—another distinction—all English municipalities, if we except the few which were constituted by prescription, were held to owe their existence as corporate communities to one and the same legal act, the bestowal of a privilege or charter by which a defined

area was exempted and detached from parochial government on the one hand, and from county government on the other. We have already seen in the first chapter how and why both these types of community, parochial and municipal, fell into decay after the end of the seventeenth century. No part of the nation felt the degradation of local government so acutely as the middle classes, whose strength lay in the towns, and who formed the most intelligent and progressive element of the population. The manufacturer still lived near his mill and the shopkeeper over his shop; and they were naturally the first to feel the need for the better paving, draining, and lighting of streets, and for a tolerable system of police. It had been the policy of the aristocracy to cripple the municipal spirit and the municipal constitutions for Parliamentary and political purposes. It was the policy of the middle classes, now that they had obtained political power, to reform the authorities and to bring the law into conformity with a higher standard of public order and public health. The most pressing needs of the country districts had been relieved by the Poor Law Amendment Act; and it is therefore not difficult to understand why it was the municipality and not the parish which secured the second place in the chronology of reform. Following the principle of Bentham and the precedent of Poor Law amendment, a Royal Commission was appointed to examine the ground and prepare it for scientific legislation. The Commission was ordered "to proceed with the utmost despatch to inquire as to the existing state of the municipal corporations in England and Wales." The Commissioners were required "to collect information respecting the defects" in municipal constitutions, "and to make inquiry also into their jurisdictions and powers and the administration of justice, and in all other respects; and also into the mode of electing and appointing the members and officers of each corporation, and into the privileges of the freemen and other members thereof, and into the nature and management of the income, revenues and funds of the said corporations, and into the several local jurisdictions existing within the limits of all corporate towns in England and Wales," and upon such inquiry to certify their findings to His Majesty the King. The Commission issued on 18th July

A Royal Commission appointed in 1833.

1833. The method of inquiry resembled that adopted by the Poor Law Commission. England and Wales were divided into eleven districts. Two Commissioners in the first instance undertook the inquiry in each of the first nine districts. The tenth, or home district, which comprised the towns in the immediate neighbourhood of London, was reserved for the Commissioners who finished their work first. London, the eleventh district, with its dependent companies, was made the subject of a distinct arrangement. The constitution of London is indeed occasionally referred to in the general Report, but the Commissioners certified that its importance was so great and its institutions so peculiar that it must be made the subject of a special supplementary Report. Thus London from the very first received exceptional treatment, and was withdrawn from the general stream of municipal progress.

The first Report, upon which the Act of 1835 was founded, is remarkable alike for thoroughness, clearness, and brevity.

Its Report in 1835.

In the course of less than forty pages[1] the Commissioners contrive to pack a concise but singularly lucid description of the general state of municipal institutions at that time and of the causes which had produced such a chaos of corruption as appeared in the separate Reports drawn up by the Commissioners upon the different towns. After touching upon the origin of corporations and the annexation of the powers of "Justices of the Peace and of Labourers" to the municipal Magistracy, the Commissioners proceed to discuss the granting of charters :—

> The greater number of the governing charters of corporations was granted between the reign of Henry VIII. and the Revolution; the general characteristic of these documents is, that they were calculated to take away power from the community, and to render the governing class independent of the main body of the burgesses. Almost all the councils named in these charters are established on the principles of self-election. The criminal jurisdiction of the boroughs received still further enlargement; and numerous instances occur in which a recorder was created, which office had been before that time confined to some of the larger boroughs. There is little reason to doubt that the form given to the governing classes, as well as the limitation of the burgess-ship during this

[1] Excluding an elaborate appendix arranged in tables of statistical and constitutional information, which give the principal facts of relevance about all the municipalities of England and Wales.

period, was adopted for the purpose of influencing the choice or nomination of members of Parliament. At this time the honorary office of High Steward was created in many boroughs, by which the borough became connected with the aristocracy or with the Crown. Some of these charters contain clauses by which the right of electing members of the House of Commons is limited to the select bodies which they created.[1]

The Report then proceeds to state that the charters granted since the Revolution exhibited no improvement in policy—

During the reigns of Charles II. and James II. many corporate towns were induced to surrender their charters and to accept new ones containing clauses giving power to the Crown to remove or nominate their principal officers. After the proclamation by James II., dated 17th October 1688, the greater number of these towns returned to their former charters. The charters which have been granted since the Revolution are framed nearly on the model of those of the preceding area; they show a disregard of any settled or consistent plan for the improvement of municipal policy corresponding with the progress of society. The charters of George III. do not differ in this respect from those granted in the worst period of the history of these boroughs.

The inevitable consequences followed.

It has been customary not to rely on the municipal corporations for exercising the powers incidental to good municipal government. The powers granted by Local Acts of Parliament for various purposes have been from time to time conferred, not upon the municipal officers, but upon trustees or Commissioners distinct from them, so that often the corporations have hardly any duties to perform. They have the nominal government of the town, but the efficient duties and the responsibility have been transferred to other hands.[2]

This brings the Commissioners to their description of the municipal constitutions as they actually existed in the year 1834. But they begin with the warning that the corporations "do not admit of being summarily described, except with regard to some of their most prominent features." These prominent features, with such generalisations as were possible with regard to the municipal constitutions in the year 1834, are arranged under certain heads, of which the following may be particularised:—Corporate Body (including Guilds and Freemen), Governing Body (including the modes of election),

[1] *Report*, 1835, p. 17. [2] *Ibid.* p. 17.

Corporate Officers (with interesting paragraphs on the High Steward, Mayor, Recorder, Sheriff, Coroner, Town Clerk, and Chamberlain); Municipal Magistrates; Civil and Criminal Courts; Police; Management of the Poor; Extent of Local Jurisdiction; Property.

After brief summaries, extending to page 32 of the *Report*, the Commissioners proceed to certify the defects they have found in municipal government. They cite many corrupt practices and flagrant abuses, not shrinking at all from individual instances of depravity. Finally, they sum up in the following memorable sentences:—

Conclusion of Report.

> In conclusion, we report to your Majesty that there prevails amongst the inhabitants of a great majority of the incorporated towns a general and, in our opinion, a just dissatisfaction with their municipal institutions, a distrust of the self-elected municipal councils, whose powers are subject to no popular control, and whose acts and proceedings, being secret, are unchecked by the influence of public opinion; a distrust of the municipal magistracy, tainting with suspicion the local administration of justice, and often accompanied with contempt of the persons by whom the law is administered; a discontent under the burthens of local taxation, while revenues that ought to be applied for the public advantage are diverted from their legitimate use and are sometimes wastefully bestowed for the benefit of individuals, sometimes squandered for purposes injurious to the character and morals of the people. We therefore feel it to be our duty to represent to your Majesty that the existing municipal corporations of England and Wales neither possess nor deserve the confidence or respect of your Majesty's subjects, and that a thorough reform must be effected before they can become, what we humbly submit to your Majesty they ought to be, useful and efficient instruments of local government.[1]

When one comes to examine the facts set out in this Report, one cannot but wonder how such abuses could have been tolerated for generations and centuries in a land whose constitution was regarded by some of its greatest statesmen and thinkers as an embodiment of political justice and political wisdom. For the picture presented by the Report is that of a complete breakdown of administrative efficiency, joined with a decay of the elementary rules of local self-government. These symptoms, as the Commissioners clearly show, were not natural, but were the artificial product of a system of political

[1] *Report*, 1835, p. 49.

corruption erected and kept up by the ruling oligarchy. This oligarchy had copied and improved upon the example set by the Crown in the days of the Tudors and Stuarts, and had deliberately degraded the organisation of local government for political purposes. Parliamentary influence was the principal object for which freemen were created (*Report*, p. 35). The Commissioners found that the corporations most alive to their municipal duties were those which, like Leeds, Doncaster, or Louth, were without members of Parliament before the Reform Act of 1832. The office of freeman was in many places coveted solely for the bribe which could be extracted from a candidate at Parliamentary elections. In the words of the *Report* (at p. 34)—

> The importance which the privilege of electing members of Parliament had conferred upon corporate towns, or rather upon the governing bodies there, and the rewards for political services which were brought within the reach of the ruling corporators, had caused this function to be considered in many places as the sole object of their institution. In some boroughs this right had survived all other traces of municipal authority.

But the evils were not entirely political. At least, they could be collected under a still broader principle. "The most common defect in the constitution of the municipal corporations of England and Wales" was, in the opinion of the Commissioners, that they were regarded and regarded themselves as independent.

> The corporations look upon themselves and are considered by the inhabitants as separate and exclusive bodies; they have powers and privileges within the towns and cities from which they are named, but in most places all identity of interest between the corporation and the inhabitants has disappeared. . . . Some corporations are occasionally spoken of as exercising their privileges through a popular body, but in the widest sense in which the term popular body is used in regard to corporate towns, it designates only the whole body of freemen; and in most towns the freemen are a small number, compared with the respectable inhabitants interested in their municipal government, and possessing every qualification, except a legal one, to take a part in it. In Plymouth, where the population, including Devonport, is more than 75,000, the number of freemen is only 437, and 145 of these are non-resident. In Norwich, the great majority of the inhabitant householders and ratepayers are excluded from the corporate body; while paupers, lodgers, and others, paying neither rates nor taxes, are admitted to the exercise of the functions of freemen, and form a considerable portion of the corporation. In Ipswich,

containing more than 20,000 inhabitants, the resident freemen form about one fifty-fifth part of the population. Of these more than one-third are not rated, and of those who are rated many are excused the payment of their rates. About one-ninth of the whole are paupers. More than eleven-twelfths of the property assessed in this borough belongs to those who are excluded from the corporation. All the inhabitants whose rent exceeds £4 per annum are taxed under a Local Act for municipal purposes. Of those who are so taxed, less than one-fifteenth are freemen. The assessed taxes paid in the borough exceed £5000 *per annum*. The amount paid by all the corporate body is less than one-twentieth of the whole.[1]

Municipal elections were a mere farce.[2] In many places the municipal franchise was enjoyed only by the dregs of the population, and in many others the ruling corporation made no pretence of being elected by a larger body (of privileged freemen), but perpetuated itself by co-opting life-members from time to time.

The governing bodies, corporations, or councils, whether "close" or "open," were usually composed of two classes—Aldermen and Common Councilmen. In some cases the Aldermen had greater power; in others the distinction was purely honorary. The Commissioners even found a few instances in which the Aldermen met by themselves as a separate deliberative chamber. Religious toleration, it is no surprise to learn, was not a characteristic of corporate life. In 1834 few instances had occurred since the repeal of the Corporation and Test Acts, and Catholic emancipation, in which either Catholics or Dissenters (who "often formed a numerous, respectable, and wealthy portion of the inhabitants"[3]) had been elected or co-opted to be Councilmen.

It was another general characteristic of this system of "classical self-government" that all affairs were managed with the utmost secrecy. The inhabitants who were subject to the corporation seldom understood or had an opportunity of familiarising themselves with the charter which constituted their government and limited its powers. The Council's

[1] *Report*, pp. 32, 33.

[2] It is of some interest to notice a complaint of the Commissioners (at p. 35) that "the election to municipal offices is often a trial of strength between political parties." No doubt one of the intentions of the Act of 1835 was to exclude national parties from municipal politics.

[3] *Report*, p. 36.

resolutions, and even its bye-laws, were rarely published. Information could indeed be obtained compulsorily by application for a *mandamus* or a *quo warranto*. But the process was too troublesome and expensive to form a practical remedy, and it constantly happened that the governors would offend against the charter and the governed against the bye-laws.

Such violations of municipal constitution were the inevitable consequence of corruption, such as that which had permeated English municipalities in the eighteenth century. But corruption found a more visible and outward expression in the appointment or nomination to corporate offices. These offices were usually filled by the patron with his underlings. Incompetent and corrupt persons were in many instances appointed to discharge the office of Recorder or Justice of the Peace. In some cases the former and salaried office was enjoyed by absentees. Thus the Recorder of Lancaster did not attend the Quarter Sessions once between the years 1810 and 1832. Election by freemen was sometimes even more debasing than nomination by a patron, and it is recorded that at Maidstone respectable people were in the habit of giving bribes to avoid being elected. The Report lays great stress upon the inexpediency of combining various functions in one person. It considers the union of the magistracy with the mayoralty to be one of "questionable expediency"; and the failure to distinguish executive and judicial from legislative office is described as a vice inherent in the institutions of the municipal boroughs of England and Wales. The magistrates were generally ignorant and inefficient, sometimes worse. "At East Retford a respectable witness who had been clerk to the magistrates, declared that one of the magistrates was in the habit of conversing familiarly with the culprits brought before him, and endeavoured to impress them with the idea that he was performing an unwilling office. On one occasion he saw the magistrate fighting with a prisoner and struggling with him on the floor."[1] At Malmesbury the magistrates were "often unable to write or read." In many places the mayor united in his own person a great number of offices, controlled the appointments to the remainder, and ruled

The Report on corporate offices.

[1] *Report*, p. 39.

the town like a petty tyrant with his little knot of dependents.[1] Sometimes Judge in a court of Record, often Coroner, generally Clerk of the Markets, sometimes Keeper of the Gaol, he was as varied in his activities, if not in his accomplishments, as the *Græculus esuriens*, and a match, on paper, for an American mayor of the present day. At Rochester he was Admiral! Sometimes this complexity of functions produced a suspicion of corruption, as at Reading, where "the town clerk, *during his mayoralty*, tried and taxed the costs of a cause in which his partner was one of the attorneys."[2] Even the Commissioners, case-hardened as they were to anomalies, describe the election of town clerk to the office of mayor as "a strange incongruity." As a rule the town clerk was only paid a nominal salary, but received legal pickings and acted as Registrar, Clerk to the Magistrates, etc. Unfortunately it was too often so arranged, not only that his duties clashed, but that his interest conflicted with his duty, as at Scarborough, where he acted as assessor in the civil court and also taxed the costs.

Ad hoc bodies in municipal boroughs.

There is abundant material in the Report to prove—if further proof were needed—the demoralising effects of this system upon the administration of the law. But perhaps its strongest condemnation is to be found in the mere fact that in most municipal boroughs of any size municipal interests were managed, not by the proper municipal authority, but by special *ad hoc* bodies (commissioners, local boards, or trustees) constituted under a local Act for such purposes as lighting, drainage, paving, and cleaning the streets and providing the town or a part of it with water. Even the police were generally placed under the management of these new authorities instead of being entrusted to the corporation. In Bath, for instance, "every quarter of the town" was "under the care of a separate board," except one, which was "totally unprotected."

[1] The mayor, or head of the corporation under whatever name, besides presiding (either in person or by deputy) over the common council, "is the chief magistrate and executive officer of the corporation. . . . In numerous instances the appointment of the inferior officers of the corporation rests chiefly or entirely with the mayor, and in many small places he practically unites in his person almost all the authority of the whole body" (*Report*, p. 23).

[2] *Report*, p. 41.

Much confusion results from this divided authority. The powers of local taxation, and the superintendence of matters so closely connected with the comfort and wellbeing of the inhabitants, which are now exercised by these bodies, appear to belong precisely to that class of objects for which corporate authority was originally conferred; but great dissatisfaction would prevail among the inhabitants, if these powers were entrusted to the municipal corporations as at present constituted.[1]

The divisions of authority not only produced apathy with respect to municipal improvements, but also serious discords and riots.

Great jealousy often exists between the officers of police acting under the Corporation and those under the Commissioners of these local Acts, and the corporate body seldom takes any active share in the duties of the board, of which its members form a part. At Bristol a notoriously ineffective police cannot be improved, chiefly in consequence of the jealousy with which the Corporation is regarded by the inhabitants. At Hull, in consequence of the disunion between the governing body and the inhabitants, chiefly arising out of a dispute about the tolls and duties, only seven persons attended to suppress a riot out of 1000 who had been sworn in as special constables, and on another similar occasion none attended. At Coventry serious riots and disturbances frequently occur, and the officers of police, being usually selected from one political party, are often active in fomenting them. In some instances the separate and conflicting authority of the Commissioners is avowedly used as a check and counterbalance to the political influence of the Corporation. At Leeds no persons are elected Commissioners of police whose political principles are not opposed to those of the Corporations.

An effectual attempt to obviate the evils resulting from the want of a well-organised system is made in some towns by subscriptions for private watchmen. At Winchester, after a local Act had been obtained, its powers were found to be insufficient, and the town is now watched by private subscription, to which the Commissioners contribute £100 from the rate.

The superintendence of the paving and lighting, etc., of the various towns is in the same unsatisfactory state, but in this branch of police the want of a single presiding authority leads perhaps to less evil and inconvenience.[2]

How terribly wasteful, costly, and unworkable such machinery must have been, and how utterably incompetent to meet the steadily increasing demands of crowded industry for light and air, and health and security, needs no elaborate proof. The inquiry only discovered municipal products which reason could have inferred from the state of the municipal machinery.

[1] *Report*, p. 43. [2] *Ibid.*

Another inexhaustible source of corruption was the want of any form of financial control over the common council. The corporate property was in many cases of considerable value. Corporate revenues, sometimes improperly derived, were often improperly expended. The Commissioners found an "erroneous but strongly-rooted opinion" that the property of the Corporations was held in trust for the corporate body only, and not for the local community as a whole. This easily led to the view "that individual corporators may justifiably derive a personal benefit from the property." At Cambridge, for instance, "the practice of turning the Corporation property to the profit of individuals was avowed and defended by a member of the Council." In some towns large sums were spent on bribery and illegal practices at Parliamentary elections. "During the election of 1826 the Corporation of Leicester expended £10,000 to secure the success of a political partisan, and mortgaged some of their property to discharge the liabilities incurred." In Barnstaple and Liverpool corporate funds had been "wasted in defending from threatened disfranchisement a body of freemen who had been proved guilty of bribery." Even where the Corporations were trustees of charitable institutions and administrators of revenues granted for specific purposes, the Commissioners found "mismanagement and misappropriation to a considerable extent." Instances are cited from Exeter, Truro, Ipswich, Norwich, Coventry, etc. At Cambridge "no accounts had been kept; but the misappropriation of these funds was not denied by the Corporation." At Lincoln river tolls granted to maintain river navigation had been converted into private property. Similar scandals were unearthed in Bristol, Beverley, Scarborough, and Boston.[1]

Fiscal corruption.

Most mischievous of all perhaps was the mismanagement by Corporations of educational endowments. Thus, "from various causes, sometimes from the improper selection of the master, as at Derby, sometimes from making the education exclusively classical,[2] the schools have become in a great measure useless to the inhabitants, and much valuable property given for the purposes of education is thus wasted.

[1] See *Report*, p. 47, on "Specific Trusts and Patronage."

[2] A Benthamite touch.

At Derby the school was once full of scholars; recently it contained only one pupil. At Coventry the funds of the school amount to £900 per annum. The two masters divide about £700 between them, but had only one pupil in 1833, and for one or two years previously. A great desire was expressed in many places by the inhabitants for the revival of the schools, and that they should afford the elements of a useful English education." [1]

Few corporations admitted any positive obligation to expend surplus revenues upon public objects. Such expenditure was regarded "as a spontaneous act of private generosity, rather than a well-considered application of the public revenue," and the credit which the close body would claim in such a case was "not that of judicious administrators but of public benefactors." The financial picture may be completed by one more citation from the Report—

> In general the corporate funds are but partially applied to municipal purposes, such as the preservation of the peace by an efficient police, or in watching or lighting the town, etc.; but they are frequently expended in feasting, and in paying the salaries of unimportant officers. In some cases, in which the funds are expended on public purposes, such as building public works, or other objects of local improvement, an expense has been incurred much beyond what would be necessary if due care had been taken. This has happened at Exeter, in consequence of the plan of avoiding public contract, and of proceeding without adequate estimates. These abuses often originate in the negligence of the corporate bodies, but more frequently in the opportunity afforded to them of obliging members of their own body, or the friends and relations of such members.[2]

The Report was ordered by the House of Commons to be printed on 30th March 1835. On the same day Lord John Russell moved the resolution to inquire into the temporalities of the Irish Church which put an end to the 100 days' administration of Sir Robert Peel, and restored Lord Melbourne and the Whigs to power. Lord John Russell, at that time a genuine reformer, became leader of the House of Commons; and on 5th June he asked leave to bring in the most important measure of the session—a Bill "to provide for the regulation of municipal corporations in England and Wales." This Bill, which, after certain amendments, received the royal

Lord John Russell's Bill, 1835.

[1] *Report*, p. 48.

[2] *Ibid.* p. 45.

assent, is now known as the Municipal Corporations Act, 1835.[1] Its provisions were based upon a careful study of the Report, and the changes thereby introduced into English government are not less important or far-reaching than those which resulted from the Reform Act of 1832 or the Poor Law Amendment Act of 1834. With a sure, if in some cases with an over-cautious, hand, the framers of the Bill drew the lines and fixed the principles of a new system of municipal government, and created an organisation which still stands beside that of the Poor Law as one of the pillars of inner administration. It is unnecessary at this point to describe the Act of 1835 in detail, because all its principal provisions are still in force,[2] and will be more adequately explained in a later book. But the leading features of the Bill in its original shape may be briefly enunciated as follows :—

1. The idea of a municipal corporation was restored to its original meaning as the legal personification of the local community represented by a Council elected by, acting for, and responsible to the inhabitants of the district incorporated.

2. This Council was to be elected, according to the provisions of the Bill, by the equal and direct vote of the local ratepayers. Its meetings were to be open to the public, and its accounts were to be audited yearly.

3. The municipal franchise was thus framed on a principle much more democratic than the Parliamentary, for it gave the right to vote to all ratepayers who had resided in the town for three years. All those entitled to vote were to be placed on the burgess list, and this was to be revised yearly in accordance with the rate books. The qualifications for a councillor in the *Bill* were the same as the qualifications for a voter. For electoral purposes the larger towns of more than 12,000 inhabitants were to be divided into wards, each ward to elect three councillors. A fine was imposed on burgesses qualified but refusing to act on election.

4. Justice was separated from municipal administration. Hitherto the municipal magistracy had been as a rule locally elected or appointed and had nearly always come from the corporate body. Henceforth magistrates were to be appointed

[1] 5 and 6 Will. IV. c. 76.

[2] Being incorporated with small amendments in the consolidating Act of 1882.

by the Crown for the towns as for the counties. The Crown was also to appoint a barrister of standing to act as Recorder in quarter-session boroughs, the Recorder to be paid, however, out of the borough fund.

5. The principle of central administrative control was introduced (though sparingly) in relation to certain matters, more particularly the raising of loans and the selling of municipal property, for which the sanction of the Treasury was made necessary.

6. The sphere (*Wirkungskreis*) of municipal government was restricted within somewhat narrow limits. The chief functions of the Council were to be the administration of local revenues and finance, police administration, the granting of licenses for the sale of intoxicating liquors, and the passing of bye-laws for the good government of the town. The appointment of officers and servants was left to the discretion of the Councils, the appointment of a Town Clerk and of a Treasurer only being obligatory.

7. The right of freemen to exercise the municipal franchise in virtue of their freedom, which had already been extinguished in most towns, was completely abolished, though section 4 of the Act (as a result of amendments introduced in the House of Lords) confirmed the right to the Parliamentary franchise which had been reserved to existing freemen by the Reform Act of 1832. By section 3 the power of admitting freemen by gift or purchase was put an end to. Section 2, however, preserved all proprietary rights and beneficial exemptions to existing freemen, their wives and children, except rights of exclusive trading which were extinguished.

Such being the main provisions of the measure, it remains to be seen to what extent the newly created system was applied. Of 285 places investigated, 246 were held by the Commissioners to be in the possession and exercise of municipal powers. And of these 246, 178 were set out in the schedules (A and B) to the Act and thereby made subject to its provisions. London was omitted as being too large and important to deserve any but exceptional and individual treatment, the remaining 67 as too insignificant to deserve any treatment at all. All charters, privileges, customs, usages, and rights prevailing previously in the scheduled towns were swept

away by the new Act,[1] so far as they were inconsistent with its provisions. Any place which afterwards obtained a charter of incorporation[2] was to be regarded as a scheduled town.

The impression produced by the Report was too strong to allow the main principles of the Bill to be called in question either in the House of Commons or in the country. Sir Robert Peel and most of his followers supported the second reading of the Bill, though they expressed their objection to the provisions which handed over the administration of charities and the licensing of public-houses to the elected representatives of the ratepayers.[3] Nor were they able to alter the Bill in committee. Even the clause vesting in the Council the power to grant alehouse licenses within the limits of the borough was retained by a majority of 45. In the House of Lords, however, there was a large and determined majority against the Bill under the skilful leadership of Lord Lyndhurst. They did not venture to reject the Bill as a whole, but determined to hear counsel on behalf of the threatened corporations. Counsel spoke from 30th July to 1st August. Then the Lords determined by a majority of 70 to hear evidence against the Bill. Witnesses appeared from the corporations of thirty boroughs[4] to show that the Commissioners had acted as the attorneys of the Whig Government to get up a case for reforms which were not needed. Meanwhile, the Commons were becoming impatient; there were Radical threats of refusing supplies; the middle classes in the country were evidently in earnest. Sir Robert Peel's influence was for peace, and on 12th August the Lords consented to go into Committee. Amendments were introduced and carried by majorities ranging from 80 to 90, to safeguard the rights

The Bill in Parliament.

[1] Sec. 1. If consistent they remained in force.

[2] Seven of the 67 were incorporated under the Act in the following year (1836).

[3] Mr. Gladstone, then "the rising hope of the stern and unbending Tories," supported the second reading of the Bill because he felt bound by its principle, which he understood to be "the abrogation of the principle of self-election and the substitution of an open and liberal system of election."

[4] Including some of considerable size, *e.g.* Worcester, Oxford, Bath, Coventry, Leicester.

and preserve the Parliamentary franchise of freemen, and to raise the qualifications for councillors. The licensing clause was struck out. It was proposed in the Bill that towns of more than twelve thousand inhabitants should be divisible into wards. The Lords reduced the limit to six thousand. Another amendment provided that the Town Clerk should hold office not at pleasure but during good behaviour. Another and still more important amendment also aimed at introducing an element of stability and continuity into the new bodies. It was proposed and carried that a fixed proportion (one quarter) of the Council should hold office for life. A Town Council without life members or aldermen would, it was urged, be an anomaly within the British constitution. There must be a permanent and unelected element in the local as in the national Parliaments. The clause as it stood went to the root of aristocratic government, and would destroy the checks which had hitherto existed on the democratic principle. On the last day of August the Bill went back to the Commons. The session was already late. Lord John Russell was anxious to have the Bill passed. Sir Robert Peel was anxious that his party should avoid the odium of rejecting it. A spirit of compromise prevailed. In spite of the protests of the Radicals, Lord John Russell accepted some of the amendments. The licensing clause was dropped. With regard to Wards, he suggested that they should split the difference and take 9000 as the minimum.[1] The principle of a higher qualification for councillors was accepted, but the minimum suggested by the Lords was reduced. The principle of life members was unanimously rejected; but the principle of continuity or stability was admitted; and it was agreed that a third of the Council should be called Aldermen and should be indirectly elected (by the councillors) not for life, but for six years, *i.e.* for double the term of an elected councillor. On the 4th of September the Lords agreed to these changes with certain slight modifications, which were again on the 7th agreed to by the Commons. The Bill received the royal assent after a struggle which introduced many changes, some good and some bad. A comparison of the Bill with the Act, coupled with a perusal of the

The Lords' amendments.

The Bill is passed September 1835.

[1] On this point, however, the Lords had their way.

debates in both Houses of Parliament, will afford the politician and the sociologist a most interesting study in the art of legislation as practised in England. And certainly the Act is a very favourable specimen of political compromises. The excellence of the organisation which it created has been tested and proved by time. After sixty-five years it remains almost unaltered. Later legislation widened the franchise and introduced safeguards against corrupt practices at elections. But if the Municipal Corporations Act of 1882, which superseded the Act of 1835 by consolidating it with intervening legislation, be laid alongside the parent measure, few variations will be found on important points, except, of course, as regards the qualification for membership of the Council and the right to vote.[1]

Another proof of the excellence of the municipal organisation created by the Act of 1835 is to be found in the unparalleled expansion of local activities which followed, and in the extension of the principles of the Act to other parts of the field of local government. "Local government has been municipalised" is the formula under which Englishmen summarise the history of the legislation which has ended in County, District, and Parish Councils. And not only has the structure of the municipal councils been copied, but their modes of working and doing business have served as models for authorities subsequently constituted. That the process of municipalising local government—that is to say, of extending representative institutions of the municipal pattern to rural and urban districts—occupied three generations[2] is to be ascribed to a conflict of principles and a rivalry between two distinct types of organisation, the one represented by the Municipal, the other by the Poor Law authorities. To understand this antithesis and its retarding influences upon development is of real importance, not only to the historian of English local government, but to the student of current problems; for the conflicting forces and principles are still at work, especially in the field of education.

With the reforms of Poor Law and of municipal government two new systems of local government were created and

[1] Cf. Part II.

[2] From the Municipal Corporations Act of 1835 to the Parish Councils Act of 1894.

set at work. Each was a clear breach with tradition, a thoroughly Radical measure, detested and denounced by every true and unregenerate Tory as unconstitutional without regard to its practical value and utility. Each was an expression of the passing of the old aristocratic *régime*. At the same time, the two organisations were in certain respects fundamentally distinct.

The two new systems contrasted.

The Municipal Corporations Act, for all its Radical thoroughness, was yet derived from history, being indeed a revival of the old national idea that the burghers of a town have a constitutional right to manage their affairs by means of a duly constituted council of local representatives. The English idea of administrative autonomy was here for the first time coupled with the democratic idea of equal rights for all active self-supporting citizens or burgesses. Thus the Act of 1835 may be said to have set up a form of administration corresponding to the old English conception of local government—a form at least as remarkable for its autonomous as for its democratic character. The all-important problem of the relation between the local authority and the central government was settled in favour of municipal autonomy, a few concessions only being made to the advocates of central control.

The Poor Law Act of the previous year was governed by a totally different spirit. There the principle of central administrative control was for the first time realised on a large scale, and although the principle lost some of its rigour during the passage of the Bill through Cabinet and Parliament, yet these concessions—weaknesses they appeared from the bureaucratic standpoint—were mostly withdrawn or modified in the course of the succeeding decade. Again, whereas the municipalities were confirmed in their ancient territorial jurisdiction,[1] subject to certain curtailments and extensions in accordance with the decline or growth of population,[2] the Poor Law Unions, on the other hand, were new districts of administration, formed according to the canons of convenience, and without regard to history

[1] Cf. sec. 7 of the Act of 1835, afterwards amended: "The metes and bounds of every borough and county corporate shall include the whole of the liberties of the borough or county as the same are now taken to be." Cf. 2 and 3 William IV. c. 64, which settled the boundaries of Parliamentary boroughs (cf. p. 228 *sqq.* of this volume).

[2] By the Boundary Commissioners appointed in the summer of 1835.

except in so far as they were aggregates of the old Poor Law parish which they superseded. The whole administration of the Poor Law was concentrated in the new central department; and England was confronted with the strange spectacle of a great system of local officialdom acting under the orders and supervision of a central authority with supreme financial and administrative control.[1] The conversion of an unrepresentative into a representative local authority was of little significance, seeing that the Guardians were mere instruments of the Commissioners, and that the franchise by which they were elected was plutocratic.

Yet the bureaucratic and plutocratic side of the new Poor Law organisation must not blind us to the fact that the central department was itself subordinate to a reformed Parliament, to public opinion, and to the Law Courts; to Parliament and public opinion through the Ministry; to the Courts of Law, because the Act of 1834 left the supremacy of the Rule of Law undisturbed. The central administrative control was itself controlled by the Judges of the High Court.

With this reservation, however, a marked antithesis remains between the Acts of 1834 and 1835. The consequences of that antithesis have been felt in two directions:—

1. It influenced municipal development in the corporate towns.

2. It complicated the problem of communal organisation outside the corporate towns.

To understand the first point we must recall to mind the strict statutory limits imposed by the Municipal Corporations Act upon the activity of the Town Councils, which it practically confined to the administration of the police and of the corporate revenues. This limitation was indeed a natural and necessary result of the conditions which prevailed in English municipalities before the passing of the Act, and were amply set out in the Report.

The growing needs of the town populations in relation to health, water, lighting, drainage, buildings, streets, security against fire, and the like, had long ago compelled the attention of Parliament. The corruption of the governing bodies in the

[1] Dr. Redlich describes the local authorities for administering the Poor Law as *reine Lokalexposituren der administrativen Centralgewalt.* [F. W. H.]

unreformed boroughs, and the incompetence of their officials, unfitted them in almost all cases to undertake such work. It had therefore been necessary for Parliament in many towns to create a new body to do the work required; and this was possible, thanks to the elasticity of private Bill legislation. Where profit could be obtained, as in the case of water or gas, the demand was often met by the creation of an incorporated trading company; otherwise Improvement Commissioners, as they were generally called, would be set up.[1] The impetus which that movement acquired in the latter half of the eighteenth century is astonishing. Of 708 local Acts which the Municipal Commissioners of 1834 found at work in the boroughs, 400 were passed under George III., 154 under George IV., and 26 under William IV.[2]

Improvement Commissioners.

The Improvement Commissioners constituted by and acting under these local Acts were empowered to raise for the "Improvement District" a new rate called the district rate, which was usually based upon the Poor Rate.[3] In the pursuance of their specific statutory duties, they were, it is needless to add, perfectly independent of the Corporation.

Thus the degeneration of municipal constitutions had led directly to a disorganisation and disintegration of municipal machinery; and this again was constantly aggravated as the standards of commercial and civic life rose, because the only way to meet a new requirement was to create a new organ of government.[4] Nothing would seem simpler than to have swept away the local Commissioners in all boroughs to which the Act

[1] As a rule such Commissioners were composed partly of nominees (by co-option), partly of representatives elected by the larger ratepayers.

[2] Cf. Clifford, *op. cit.* vol. i. pp. 7-9; vol. ii. pp. 227, 303 *sqq.* Report of 1835, p. 43. These Acts usually provided that only large ratepayers could be nominated or elected. Thus in Manchester an Improvement Commissioner must occupy a house at an annual rent of at least £30. Cf. Mr. Sidney Webb in the *Municipal Journal*, 1899, p. 1223.

[3] *I.e.* followed the Poor Rate assessment.

[4] Clifford, *op. cit.* vol. i. p. 304 *sqq.*, gives many examples of this disorganisation, which was at first only to a very slight extent remedied by the Act of 1835. In Liverpool there were three sets of Commissioners besides the Town Council. Manchester had no charter; but each township had its governing body, and there were four other authorities created by local Acts. A similar state of things prevailed in Leeds, Birmingham, and Bradford.

of 1835 applied, and to have vested their functions in the reformed municipal council. But the Act contained no such provision, chiefly because it was impossible by a stroke of the pen to get rid of the deep-rooted mistrust of municipal authorities, and secondly, because it was an article of the political creed of the day that the concentration of a number of branches of administration in one authority tends to mismanagement and corruption. A further obstacle in the way of any general compulsory Act to extend the sphere of municipal activity was the disinclination of Parliament. The procedure of private Bill legislation had been designed and developed in order that local government might be built up bit by bit to suit the particular needs of a particular locality. If a special Act worked well it might suggest or serve as a model for general legislation. In the case of the Municipal Corporations Act there was an additional reason for not extending compulsorily the functions of the Council. The character of the boroughs was infinitely varied. It might well seem almost impracticable to frame general provisions suitable alike to the sleepy little country town and the great manufacturing centre. The framers of the Act contented themselves, therefore, with a somewhat vague section enabling, but not compelling, "Trustees appointed under sundry Acts of Parliament for paving, lighting, cleansing, watching, regulating, supplying with water, and improving" the whole or certain parts of the scheduled boroughs to transfer such powers "if it shall seem to them expedient" to the reformed corporation. For some years after the passing the Act instances of such transfer were rare; but in 1879, out of 240 municipal boroughs, only 14 possessed a sanitary authority independent of the Town Council.[1]

Not abolished by the Act of 1835.

But while the functions of the Municipal Council were being increased by private Acts, public legislation was making a breach in its autonomy by introducing the principle of central administrative control, already established as we have seen over Poor Law authorities. The growth of insanitary conditions and of sanitary science soon led to general legisla-

[1] See Somers Vine, *English Municipalities, their Growth and Development*, p. 222. The consolidation was effected in each case, it may be presumed, by local Act—a costly but convenient process.

tion about public health. To carry out the law local authorities were required. But instead of creating "Boards of Health," in the municipalities, Parliament adopted the Town Council as the sanitary authority, at the same time imposing the principle of central administrative control.

Thus the municipality, though practically autonomous in the province marked out by the Municipal Corporations Act of 1835, found itself in the administration of sanitary laws subjected to the orders and regulations of a central department of Public Health only less rigorous and inquisitorial than the Poor Law Commissioners.

We shall observe in the next chapter the development of the laws which fall within the sphere of local administration and the parallel growth of an organisation in urban and rural districts untouched by the Municipal Corporations Act. We shall see, further, how the democratic franchise passed from municipal to other local authorities, while at the same time the principle of central control first embodied in Poor Law organisation became a decisive factor in English local government, and was extended over the whole field of internal administration.

CHAPTER III

THE DEVELOPMENT OF A SANITARY CODE AND OF SANITARY AUTHORITIES TO ADMINISTER IT [1]

PARTS of England once occupied by a thin and scattered agricultural population had already in the eighteenth century begun to yield those black treasures of coal and iron which made them great and populous centres of industry; tiny market towns and villages in Lancashire, Yorkshire, and the Midlands often became in the course of a generation or two populous and smoky; slums offending against every rule of health were built round insanitary factories; trout streams were converted into foul sewers, and every open space was a rubbish heap. The organisation of the parish or township was quite incapable of coping with these new conditions. At first the only remedy which offered itself was that provided by private Bill legislation. As in the municipal boroughs so in these new urban districts Improvement Commissioners were appointed for the purpose of lighting, draining, and paving the streets. But this piecemeal legislation, even where it was undertaken, could not provide a satisfactory solution. If the Prussian statesman Vincke,[2] perhaps the shrewdest contemporary critic of English administration, could

Growth of towns.

[1] On the development of the English Laws of Public Health, see the comprehensive account given in Sir John Simon's *English Sanitary Institutions*, 1897. The most important official source of information is the Report of the Sanitary Commissioners, 1868-1872. Glen and Lumley (the latter edited by Macmorran) have made the best legal compilations of the statutes now in force and of the decisions interpreting them. Cf. also Vauthier, *Le gouvernement local de l'Angleterre*, 1895, chap. vii.; Finkelnburg, *Die Offentliche Gesundheitspflege Englands*, 1874.

[2] See Vincke's *Darstellung der inneren Verwaltung Grossbrittanniens* (Berlin, 1815).

describe the utter want of a systematic code of health and highway law as one of its worst defects, we may be sure that legislation had not kept abreast of the actual needs of the country in questions of inner administration. The development of the machinery, as well as of the material, of administration had been arrested; and no remedy was possible until the way was opened by the passing of the Reform Act of 1832. Then came the Poor Law and Municipal Corporation Acts, but with their passing the reforming zeal of the Whig or Liberal Government seems to have been more or less exhausted. People wanted to take breath and watch for a time the working of the new institutions. Conservative forces began to regain strength. Nevertheless, after long and laborious preparation Parliament was induced to take another step forward, in consequence partly of an epidemic of cholera, partly of the disclosures made each year by the Poor Law Commissioners in their Report touching the insanitary conditions which prevailed in all parts of the country.

The need of sanitary laws.

So far as the improvements we are about to notice were due to personal causes, the chief credit belongs to Edwin Chadwick.[1] He had persuaded Parliament to pass, along with the Poor Law Amendment Act, an Act creating a central statistical department and a local organisation co-ordinate with that of the Poor Law.[2] With the help of the statistics thus obtained (and more especially the rates of mortality and the classification of diseases) Chadwick began his campaign against the insanitary conditions which were now established by official and trustworthy figures and placed beyond the reach of controversy. In the year 1838 the new Poor Law Commissioners forwarded a memorandum to the Home Secretary. The memorandum pointed out that if the condition of the poor was to be permanently improved and the administration of the Poor Laws placed on a sound and

Edwin Chadwick.

[1] For the significance of Chadwick and his work, cf. Sir John Simon, *op. cit.* p. 179 *seq.* and pp. 231-234; Sidney Webb, *Municipal Journal*, 1899, p. 1295.

[2] 6 and 7 William IV. c. 86. The new department was called the General Register Office and its head the General Registrar. The appointment of Local Registrars and Superintendents was confided to Boards of Guardians, but the qualifications necessary for candidates were prescribed by the central department.

economic basis, it was highly necessary to adopt preventive measures against certain primary evils, particularly by enacting and enforcing a systematic code of health in the towns. The epidemics, now observed and registered by a central department, were one of the main causes of the burdensome national expenditure on the relief of pauperism. These representations were confirmed and the impression they produced deepened by reports made by the medical inspectors of the Board, which depicted almost for the first time the hideous conditions—destructive to health and morality alike—then prevailing in the homes of the working classes. Here was a crowded population, rapidly growing in numbers, unguarded by and utterly regardless of sanitary laws.[1]

Inquiries and Reports.

The first result of the movement thus initiated was that Parliament ordered the Poor Law Commissioners to undertake a thorough inquiry into the sanitary conditions of the country and to report thereon (1839), and at the same time appointed a select committee of their own for the same purpose. The Committee reported in favour of the enactment of general building laws and general drainage laws, as well as of the organisation of local sanitary authorities in populous places. The report of the Poor Law Commissioners, the greater part of which was composed by Chadwick, was issued in 1842. Its uncompromising but scientific exposures made a deep impression on public opinion and Parliament, and from its appearance may be dated the beginning of those reforms in material law and organisation which are summarised and comprised in the conception of Public Health—a term under cover of which a great number of new functions and new activities have been assigned to local authorities in England. The movement may indeed be viewed as part of a wider revolt against the undue extension of the principle of *laissez faire*. England was indeed fortunate in the almost simultaneous success of two very different but not necessarily conflicting schools of thought. The first is the Manchester school, usually associated with the names of Mr. Cobden and Mr. Bright and with the repeal of the Corn Laws in 1846. The second is the philanthropic or socialistic school, usually associated with the name of Lord Shaftesbury and with

[1] Cf. Simon, *op. cit.* p. 180 *seq.*

the introduction of Factory legislation. Factory legislation is not merely a branch of public health; for it includes the limitation of the hours of labour and the application of special prohibitions and regulations to the work of women and children. Public Health legislation and Chadwick's labours may therefore be regarded, not only as a natural development of the work of local authorities from their early duties of keeping the peace, maintaining the roads or supporting the poor, but also as symptomatic of a more general movement for extending the sphere of internal administration and of multiplying the supervisory powers and positive duties of the State in relation to its citizens. It was Bentham, as we have seen, who first taught the necessity for changes in the organisation and the aims of the State. After Bentham and the great Radical movement a reform in the structure of government was unavoidable. Then came Chadwick, and set the reformed machinery to work on the right material by directing public attention to Public Health as the great central need of industrial society. The importance of the inquiry and legislation which resulted from his almost passionate advocacy can hardly be overstated. They were the first great achievements of democracy. English democracy began with material law and then went on to formal law. The transition from the rule of the squires to the rule of the middle classes had followed the more natural order. But the middle classes, more liberal than their predecessors, were willing to extend the benefits of legislation to the unenfranchised classes. Factory legislation and Public Health legislation preceded the democratisation of that middle class constitution which had been erected by the Acts of 1832 and 1834 and 1835.

I

Yet, considering the ravages of epidemics and the foul condition of slums and factories in many parts of the country, Parliament moved very slowly. The administration of Sir Robert Peel, having revived the Income Tax as a fiscal engine for the introduction of Free Trade, was busily engaged in the great work of simplifying the tariff. Outside the doors of Parliament men were already absorbed in that giant struggle

between the Anti-Corn Law League and the landlords which ended in the repeal of the Corn Laws and the break up of the Conservative party (1846). And so it happened that this Report of 1842 failed to bring Ministers to the point of introducing a measure of sanitary coercion into Parliament. They preferred to appoint another Royal Commission, which might inquire still more minutely into the conditions of the most thickly populated districts and formulate proposals for an amendment of the law. Chadwick, though nominally no more than an expert invited to give his opinions, was in reality the ruling spirit of the second as he had been of the first Commission; for he had most to do in choosing the main subjects of inquiry, in weeding the evidence, and in working up the material. The Report, which was published in 1845, restated the main conclusions arrived at by the preceding Commission, but with certain additional recommendations of very great importance. The Crown, it was urged, should be empowered to supervise and inspect the administration of the general sanitary laws in large towns and populous districts. The local authorities entrusted with carrying out these laws should receive wider powers of administration, and their districts should in many cases be enlarged. The Report further recommended that the water supply and drainage, as well as the paving, repairing, and cleansing of the streets should be concentrated in the hands of one and the same authority in each district. In conclusion the Commissioners emphasised the necessity of giving the central department compulsory powers to deal with cases in which the local sanitary authority proved negligent in the performance of its duties.

The delay in sanitary legislation.

The year 1845 is a decisive one in the history of Public Health. It marks the end of the stage of inquiry and the beginning of the stage of legislation. The preparatory work of the expert is done, the activity of Parliament commences. Sir Robert Peel's administration, torn by internal dissensions and menaced by a revolt of a great section of its landowning supporters, had, however, in the session of 1845, only time to make a show of acting upon the report of its Commission by introducing the Health of Towns Bill. The Bill was withdrawn after slight

The Health of Towns Bill.

discussion; but the session of 1845 was not altogether barren in legislation upon matters of local government. Largely through the influence of that old and tried Benthamite, Joseph Hume—one of the most stalwart friends of true reform and economy—a beginning was made by the passing of the first of a very useful series of measures usually called "The Clauses Acts," or "The Model Acts."[1] These Model Acts contained model clauses which local authorities might adopt; and they proved very serviceable in assisting the preparation of local Acts and increasing their efficacy. But the absence of compulsion as well as the cost and difficulty of procuring a local Act still presented serious obstacles to anything like a general improvement in the sanitary standards of town life; and the need for a general Act had already been recognised, as we have seen, by the government of Sir Robert Peel.[2]

The Clauses Acts, 1845.

Two years later (1847) a similar Bill, brought forward by Lord Morpeth with the same object, also proved abortive owing mainly to bad draftsmanship. But on 10th February 1848 previous errors were repaired, and Morpeth moved a second time "for leave to bring in a Bill for the improvement of Public Health"[3]—a Bill which was destined to become law and to be known as the Public Health Act of 1848. Into the debates it is not necessary to enter.[4] Enough that the

The Public Health Act of 1848.

[1] The "Model Acts" (1845-47) or the Clauses Acts were eleven in number, nine of which related more or less to public health, namely, 8 and 9 Vict. c. 18; 10 and 11 Vict. cc. 14, 15, 16, 17, 27, 34, 65, and 69. These were concerned with land-purchase, markets, gas, water, harbours, cemeteries, police, and the paving and cleansing of towns.

[2] In 1845, by their Bill (introduced by Lord Lincoln) "for the improvement of the sewerage and drainage of towns and populous districts, and for making provision for an ample supply of water, and for otherwise promoting the health and convenience of the inhabitants."

[3] For Lord Morpeth's speech introducing the Bill, see Hansard, 3rd Series, 96, pp. 386-403. Joseph Hume welcomed the measure, but observed that it should clearly be accompanied by the repeal of the window tax, which prevented ventilation.

[4] The Parliamentary history of this Bill, the most important of the Session, is not thrilling. Its passage is not even referred to in the Annual Register for 1848. On 21st February Lord Morpeth moved the second reading in a thin House, such as used to be the rule when questions affecting local government were under discussion. The second reading was not opposed, though one member complained that the Bill would tend "to increase that mode of foreign

measure was passed with the recent memory of the cholera epidemic, and a lively fear of its revival, in the minds of legislators. Its significance in the history of English law may be judged from the fact that it was the first compulsory measure of public health imposed by Parliament upon local authorities, if we except an obscure and almost forgotten Act of James I.[1] and the Vaccination Acts.[2] Looking then at the provisions of the Public Health Act, 1848,[3] the first point to be noticed is the exclusion (in sec. 1) of the metropolis from its operation, the Legislature in this case following the precedent of the Municipal Corporations Act of 1835. The general purpose of the Act is stated in a preamble:—

> Whereas further and more effectual provision ought to be made for improving the sanitary condition of towns and populous places in England and Wales, and it is expedient that the supply of water to such towns and places, and the sewerage, drainage, cleansing, and paving thereof, should as far as practicable be placed under one and the same local management and control, subject to such general supervision as is hereinafter provided: be it therefore enacted that this Act *may* from time to time be applied in manner hereinafter provided to any part of England and Wales.

The kernel of the Act is to be found in the provisions

government which was known by the name of centralisation." The powers of the Central Board were reduced and the status of the local authorities improved in Committee. Certain amendments made by the Lords, including one to abate the smoke nuisance, were rejected (see Hansard, 15th August 1848), and the Bill received the royal assent on 31st August 1848.

[1] 1 Jac. I. c. 31, passed for the purposes of checking the ravages of the plague (repealed by 1 Vict. c. 91, s. 4). This was really the first of the Quarantine Acts. Its quaint provisions are of special interest to the student of the decay and revival of popular local government in England. By this Act the Mayor, Justices, and head officers of a place infected by the plague were enabled to make a rate for the relief of the sufferers, and also to issue regulations to prevent the plague from spreading.

[2] 3 and 4 Vict. c. 29 (amended by 4 and 5 Vict. c. 32, etc.), entitled, "An Act to extend the practice of Vaccination," by which the guardians or overseers of the poor are directed, subject to regulations by the Poor Law Commissioners to contract with the medical officer of their district for the vaccination of all persons there resident.

[3] 11 and 12 Vict. c. 63. For a useful introduction to, and digest of, English sanitary law from 1848 to 1870, see "The New Sanitary Laws—namely, the Public Health Acts 1848 and 1858, and the Local Government Act 1858, with introduction, notes, and index, and an appendix of other statutes, by W. G. Lumley and E. Lumley." London, 1871.

which established a General Board of Health; and it was this, the most essential feature of the measure, which encountered most opposition both in Parliament and in the press.

The General Board of Health.

As a concession to "local autonomists" the new central department was only set up in the first instance for a provisional term of five years; indeed, it followed the pattern of the Poor Law Board in more respects than one. It was composed of a President (the Commissioner for the time being of Her Majesty's Woods and Forests) and two other persons to be appointed by the Crown. The Board, which was empowered to appoint secretaries, clerks, inspectors, and other servants, had to originate and in some measure to control all proceedings under the Act. By sections 8-10 (the most important clauses in the whole Act) the General Board was empowered to create a local health district and a Local Board, either on petition from the ratepayers or where the annual mortality bore a certain proportion to the population.[1] If the Act were adopted in a municipal borough, the Town Council became the local sanitary authority, so that in this case no further complication was added to the existing chaos. But in places other than municipal boroughs the adoption of the Act involved the creation of a completely new authority, the Local Board of Health, and elaborate provisions for its constitution were contained in sections 12-28 of the Act. The Local Board of Health (whether it consisted of the members of a borough council or not) was empowered in some cases, and compelled in others, to carry out a great number of specific duties. These duties included not only sanitation in the

A new local sanitary authority.

[1] 11 and 12 Vict. c. 63, sec. 8: "Upon the petition of not less than one-tenth of the inhabitants rated to the relief of the poor of any city, town, borough, parish, or place having a known or defined boundary" (this to enable the Act to extend to extra-parochial places), "(*a*) not being less than thirty in the whole, or (*b*) where it shall appear" from the Registrar-General's return that the average annual mortality in such place during the last seven years has "exceeded the proportion of twenty-three to a thousand of the population" of such place, "the General Board of Health may . . . direct a superintending inspector to visit such city, town, borough, parish, or place," and to make public entry, etc. The inquiry was followed by a report (sec. 9), and the report might be followed by a provisional order creating a local Board of Health (sec. 10).

strict sense,—sewerage, drainage, and the like,—but also such wider functions as the supply of water, the management of the streets, the making and maintaining of burial-grounds, and the regulation of offensive trades. The later sections of the Act provided financial machinery for the discharge of these functions. By sections 86-88 the local board might lay a general district rate and special district rates based upon the poor rate assessment.

It would be a mistake to belittle the Public Health Act of 1848, because it did not apply automatically to the whole country, or even to the more populous districts. An Act of universal application could not have been passed, so strong was the feeling against bureaucratic and centralising tendencies. The Act of 1848 is a great step forward, because in the first place it provides a more or less complete code of public health; secondly, it could be adopted by any town without the delay and expense of a private Act; thirdly, it could be forced upon those districts which needed, and perhaps dreaded, it most by a central department of government. In spite of all its defects it did a vast deal of good. It supplied many communities and districts for the first time with a representative form of local government. Unfortunately a constitutional pattern was borrowed from the Poor Law Act of 1834, instead of from the Municipal Corporations Act of 1835. Instead of giving one vote to every householder, a strict system of classification according to wealth was adopted. The ratepayers and owners of each district were entitled to vote according to "the scale" set out in section 20 of the Act in respect of property in the district of the Local Board,[1] and any person who was both owner and also *bona fide* occupier was entitled to vote in respect of both ownership and occupation.

The Local Board was not incorporated, but was authorised to make bye-laws and regulations for the purpose of carrying out

[1] The scale was as follows :—

On a rateable value of less than £50	. . . . .	1 vote.
,, ,, from £50 to £100	. . . . .	2 votes.
,, ,, ,, £100 ,, £150	. . . . .	3 ,,
,, ,, ,, £150 ,, £200	. . . . .	4 ,,
,, ,, ,, £200 ,, £250	. . . . .	5 ,,
,, ,, more than £250	. . . . .	6 ,,

the Act. There is a long, and in one respect supererogatory,[1] series of provisions (sec. 115) laying down the conditions precedent to the validity of a bye-law. One is that a bye-law must be confirmed by one of the principal secretaries of State. It may be observed in passing that such confirmation would not make valid a bye-law otherwise invalid.[2] That the control of the Central Board over the local executive was much reduced in the passage of the Bill through Parliament may be seen by a reference to the debates in both Houses.[3] The three important offices of clerk, surveyor, and inspector of nuisances were all in the appointment of the Local Board, and removable at the pleasure of the Local Board, subject only in the case of the surveyor to the approval of the General Board of Health; and even this exception was abolished by the Local Government Act of 1858.[4] Still the supervisory power of the General Board acting through its inspectors was very considerable, and its authority was rendered more formidable by the institution of audit. Here, however, the effectiveness of the financial control was seriously impaired through the appointment of the auditor being entrusted to the Local Board. This error was to be partially repaired in the Act of 1858, and fully except as regards municipalities in the Act of 1875.[5]

It cannot, however, be denied that this first Act for the regulation of Public Health contained a considerable dose of centralisation; and its application to boroughs produced a sharp contrast in municipal government. For those boroughs which extended their spheres of activity by adopting the Act found themselves subordinated in their new work to the control and inspection of a central department, while so far as their old work (under the Act of 1835) was concerned they continued in full enjoyment of local autonomy.[6]

Centralisation and its enemies.

[1] Namely, "provided that no such bye-laws shall be repugnant to the laws of England."

[2] See Reg. *v.* Wood, 5 E. and B. 49.

[3] See footnote, p. 139.

[4] 21 and 22 Vict. c. 98, sec. 8.

[5] Public Health Act 1848, sec. 122. Local Government Act 1858, sec. 60. Public Health Act 1875, sec. 247.

[6] Cf. Gneist, *Self-Government*, chap. xi.; Simon, *op. cit.* pp. 205-225; Sidney Webb in *Municipal Journal*, 1899, pp. 1295-96.

The principle of centralisation, which had won its way with such difficulty into Poor Law administration, was not allowed to remain in unchallenged possession of its second conquest. The mere possibility of a place being saddled against its will with a local board of health provoked violent indignation, and was denounced as a lawless and un-English interference of the Government in local rights and interests. The opposition proved strong enough to defeat a London Bill proposed under Chadwick's auspices in the same year, which would have carried out the principle of state control over metropolitan government in a very uncompromising fashion. Chadwick meanwhile, the dictator of the new Board, pressed his ideas with too little regard for popular feeling and prejudices. If he had known his countrymen and their political history a little better, he would have seen the impossibility of introducing that strict system of centralisation for which he strove. The middle classes, who now held sway, were not ripe for an advanced social policy, and were distinctly hostile to bureaucratic ideas. Even grants in aid were often regarded with suspicion as excuses for the intervention of the central government. But there was no grant in aid to gild the pill of sanitary legislation, and prejudices whether ignorant or enlightened were supported by the shrewd timidity of the ratepayer. Lastly, there was a practical consideration which appealed strongly to common sense reformers—the want of such trained and skilled men with technical knowledge and experience, as would be necessary to fill the ranks of the regiment of officials which Chadwick's schemes required. As a matter of fact, the officials and inspectors employed by the first General Board of Health were open to the suspicion, and certainly not always above the temptation, of jobbery and corruption. The great expenditure involved in schemes of sanitation, and the lucrative contracts to which they give rise make the famous "rule of Cæsar's wife" very necessary for those who represent the interests of the public in such matters.[1]

The philosophy of centralisation had another enemy more extreme and more romantic than either history, economy, or common sense. The school of sentimental philanthropists

[1] Cf. Sir John Simon, *op. cit.* p. 299 *sqq.*

which had fought the Poor Law Act of 1834, had by this time developed a vein of what may be called constitutional romanticism. Indeed, even before the Reform Bill, both in Parliament and in the press—especially in Cobbett's writings—Bentham's ideas of centralisation had been denounced as attacks levelled against the very heart of the English constitution—that is to say, against the principle of absolute local autonomy. Our new romanticists tried to restore the older radical tradition, which had regarded Parliamentary reform in the light of a restoration of ancient privileges stolen away from the people by monarchical encroachments of the sixteenth and seventeenth centuries. They zealously ransacked ancient histories of law to prove that all existing guarantees of civic freedom dated from the Anglo-Saxon period. They found in the laws of Alfred the Great and Edward the Confessor the true and indestructible foundation of English institutions. They posed as revivalists of the Old German *Volksfreiheit*, and finally adopted as their creed and formula the common law, declaring that the common law embraced the whole ordering of the constitution, and all the true principles of political organisation. A correct and complete knowledge of the common law would give all that citizens could require. Statute law they regarded with a certain contempt, maintaining stoutly that Parliament could not, and should not, change any principle of the common law. They even adopted the old contention of the Whigs and Tories, that the constitution cannot be altered by majority votes because it is a part of the common law. Thus they were led to oppose administrative centralisation not merely as bad, but as unconstitutional, and to declare that only one form of control—the direct control of Parliament—was compatible with the law and the constitution. The Public Health legislation of 1848 stimulated this "romantic" movement, and in Toulmin Smith a leader was found who combined legal learning and industry with the skill of a practised writer, and some of the arts of an agitator. In pamphlets and larger works he called history to the aid of the constitution, and proved to his own satisfaction that the whole system of reformed government was un-English.

The sentimentalists and central control.

Toulmin Smith.

Next he set on foot an agitation, and held a series of meetings in large towns, at which resolutions were passed against the Public Health Acts. *Local Government and Centralisation* is the book which best expresses the views of Toulmin Smith and his school. The reader gets a picture of the English constitution painted in bright colours from the standpoint of romanticism, with a clearness of outline which compensates for certain historical errors and legal misconceptions. His main argument comes to this: centralisation in England is not only unconstitutional, but unnecessary and superfluous. The parish is the constitutional centre of the whole system of local government; for the parish, in its ancient and original state, unhampered by the statutory fetters of degenerate modernity, was the sole organ of local government, and as such was competent to act by and on behalf of all the inhabitant householders, and to do all things necessary for the common good; if the inhabitants of the parish would only make use of their ancient rights, they could do for themselves anything they required without adopting the Public Health Act, or any other statutory powers. Toulmin Smith was fond of pointing to his own parish of Hornsey as a proof of what could be done by a learned but practical lawyer to reform the organised life of a small rural community; but he failed to show how such an instance disposed of the need for the reform of local government, much less for the enactment of a code of Public Health applicable to populous districts, and regulated by a central department.[1]

Fanned by such influences, the unpopularity of the Public Health Act and of Chadwick's *régime* grew rapidly. But for a time the Government was able to maintain its policy. Additional powers were conferred on the Board of Health (by 11 and 12 Vict. c. 123, and 12 and 13 Vict. c. 111) for

[1] On Toulmin Smith, cf. *The Dictionary of National Biography*. He founded an Anti-centralisation Society, and wrote many pamphlets for it. The Society disappeared after his death. That any importance or interest attaches to his books is chiefly due to the influence they exerted on much greater writers in Germany, more particularly Gneist and Lothar Bucher. In his once well-known pamphlet, *Der Parlamentarismus wie er ist*, 1857, Bucher borrows Toulmin Smith's ideas wholesale, and serves them out for the purpose of influencing public opinion in Germany as if they were the eternal truths of English politics.

dealing with epidemics and contagious diseases. A report was drawn up by Chadwick upon interments, which resulted in the passing of an Act (13 and 14 Vict. c. 52) by which burials in the metropolis were placed under the supervision of the General Board of Health, and power was given to appoint an additional member of the Board. That Act was, however, repealed by 15 and 16 Vict. c. 85, which introduced other regulations. After 1852 the General Board consisted of four members, two of whom (Mr. Edwin Chadwick and Dr. Southwood Smith) were paid Commissioners. The unpopularity of the Board had now made itself felt among the governing classes. By section 4 of the Act of 1848 it had been established for five years only, and its existence would terminate at the end of the session of Parliament next after 31st August 1853. "Before that time arrived," writes Lumley, a very trustworthy authority, "much public dissatisfaction was expressed with its proceedings." He does not discuss the justice of these complaints. "But no one can deny," he adds, "the great ability which was exhibited in many of the important documents, statements, and reports, which emanated from the Board upon the epidemic cholera, the practice of quarantine, the burial of the dead, the supply of water, its impurities, the proper modes of drainage, and the removal, deodorising and utilising the sewage of towns; while the greatest zeal, activity, and energy characterised their labours."[1]

Unpopularity and dissolution of the General Board.

Accordingly in 1854 the old Board was dissolved, and Chadwick was pensioned off.

It must not be supposed that the usefulness of the Act of 1848 ceased when Chadwick retired. The original Board, however, disappeared, and it may be well to indicate how much work had actually been done before the end of its short life.

At the close of the year 1854 seventeen Acts of Parliament had been passed, confirming orders of the Board,[2] and apply-

[1] See Lumley, *English Sanitary Law*, 1871, pp. 6, 7 of introduction.

[2] See Parliamentary Paper, No. 328, 1857. Lumley adds that 230 local boards are set out in the Union Officer's Almanack for 1856. Up to 31st August 1870 the total number of local boards acting under these Acts was 670, besides 114 improvement commissioners. See Parliamentary Return, No. 431 of the session of 1870.

ing the Act to no less than 120 places; and, moreover, the Act was applied to 94 other places by orders in Council during the same period. In most of these places a real advance had been made in the standards of health. The foul and unspeakable conditions which prevailed in and about the homes of the working-classes were gradually improved, a limit was put on the ravages of death, the opportunities of disease were lessened, the poor man was saved from some of the consequences of his poverty, as the ignorant was protected from some of the consequences of his ignorance. Chadwick's "despotic" centralisation has conferred far greater services upon his countrymen than they can ever hope from fine words about the common law, and the miraculous resources of Anglo-Saxon institutions.

As a matter of fact, apart from Chadwick's retirement, the set back of 1854 was rather apparent than real. It is true that by 17 and 18 Vict. c. 95, the constitution of the General Board of Health was altered; but the powers and duties of the old Board were transferred to the new Board. In the following year Mr., afterwards Sir John, Simon was appointed medical officer to the new Board.[1] The existence of the Board was continued from year to year by Act of Parliament until 1st September 1858, when it expired, some of its duties and powers falling to the Home Secretary, and others to the Privy Council, in accordance with the provisions of the Local Government Act of 1858.[2]

The new Board, 1854.

Meanwhile, questions of organisation apart, the sanitary law itself was being steadily improved. Public nuisances had begun to engage the attention of the Legislature. By common law such nuisances could be dealt with on complaint by the parish as indictable offences. But the procedure was too clumsy to be effective, and Parliament now sought to deal with nuisances by preventive administration. With this object the first of the Nuisance Removal Acts was passed in the year 1846. These Acts are of interest and importance in the develop-

Improvements of sanitary law.

[1] Under 18 and 19 Vict. c. 115.

[2] 21 and 22 Vict. c. 98. The Act was intended to supplement and amend the Public Health Act of 1848.

ment of English local government, because the duty of carrying out their provisions was entrusted to Boards of Guardians. Thus the new Poor Law authority was recognised for the first time as the rural sanitary authority, and its district the Poor Law Union was foreshadowed as the future sanitary district for rural areas. The Nuisance Removal Act of 1855 extended the powers of Local Boards and Town Councils, by enabling them to appoint Inspectors of Health. A recurrence of the cholera epidemic about the same time helped to produce quite an array of perplexing statutes dealing with various branches of public health. Few of them deserve special attention; such constitutional significance as they possess is due to the fact that they increased the existing chaos of areas, and multiplied the existing complexity of overlapping and conflicting jurisdictions.

The Local Government Act 1858.

But the Local Government Act of 1858 stands out as an important piece of legislation. The Act is not happily named, as its contents would have been much more appropriately described by such a title as "The Public Health Act of 1858." It was to be read with, and to form part of, the Public Health Act of 1848. Many of the sections of the earlier Act were repealed, and new provisions substituted. By dissolving the Board of Health the new Act did to some extent relieve the Local Boards of central control, while it certainly enlarged the powers conferred on them by the Act of 1848. Some of the most important benefits conferred by the Act are contained in sections 44, 45, 50, 75, etc., whereby portions of the Model or Clauses Acts are incorporated, so that districts could henceforth obtain by mere adoption advantages for the attainment of which a private Act had hitherto been necessary. The dissolution of the Board of Health has been already referred to; and this, as well as the surrender of the power to enforce the sanitary code upon a reluctant district from the centre, may be regarded as retrogressive. They were at any rate concessions to the Anti-Centralisation Society. But the medical and supervisory functions of the Board were not abolished. Some, as we have seen, were transferred to a subordinate department of the Privy Council, while the business of confirming bye-laws and provisional

orders was entrusted to the Local Government Department of the Home Office. On the whole, however, the Act of 1858 is to be viewed as an enlargement and improvement of the Act of 1848. While strictly preserving the permissive character of sanitary legislation, the process of adoption was greatly simplified. Instead of a tedious and rather elaborate system of petitions and inquiries, the local authority was enabled to adopt the whole of the sanitary code by a simple resolution—a provision which far more than compensated for the loss of such compulsory powers as the central government had possessed under the Act of 1848. In the following decade the question of Public Health seems to have slept. Parliament was chiefly concerned with questions of military expenditure, the further revision of the tariff, and finally with the agitation for household suffrage in the towns. But in 1868 the purely urban character of sanitary legislation received distinct statutory expression in an Act restricting the adoption of the Public Health Acts to places containing not less than 3000 inhabitants.

II

The chaos of sanitary authorities.

The results of these large and not too deliberate schemes of legislation were, however, not less embarrassing than encouraging. The field of local government was overgrown with an almost impenetrable underwood of conflicting jurisdictions, while the very existence of the laws, as well as the mode of administration, depended upon the whims of particular towns and districts. The voluntary or permissive principle had not wholly served its purpose. The benefits of sanitary science and sanitary law were only partially adopted. But more than anything else uniformity was required. The time was ripe for a new chapter of legislation. As before, the way was prepared by a Royal Sanitary Commission. This Commission,

The Royal Commission, 1868-71.

appointed in 1868, issued in 1871 a report which set out with the utmost clearness the incompleteness, imperfections, and unworkability of the existing system. In 700 urban districts, it appeared, Town Councils, Improvement Commissioners or

Local Boards were empowered to carry out the Public Health Acts. But in most cases the use made of this power had been disappointing; and in rural districts the Boards of Guardians had shown little energy in putting the Nuisance Removal Acts into operation. Parliament had done its part by introducing scientific laws of public health, but the machinery of local government had proved insufficient to translate those laws into actual administration. Generally speaking, the local authorities had remained inactive, however insanitary the conditions which prevailed in their districts.

Foul water and unscientific systems of drainage, unhealthy houses and overcrowding, produced and propagated all kinds of endemic and epidemic disease. The report laid the blame for these evils principally upon the permissive or adoptive character of the new sanitary law, upon the want of inspection, and upon the disorganisation and friction resulting from the creation of innumerable *ad hoc* bodies not with reference to general principles of convenience, but one by one according to the exigencies and demands of each particular locality. But if sanitary administration was still very backward in urban districts, it was practically non-existent in the country. Neither guardians nor vestries had sought to make energetic use of the powers conferred upon them. Here too effective administration was embarrassed by a chaos of administrative jurisdictions. Petty sessional divisions (the sphere of the Justice of the Peace), Poor Law Unions, highway districts, parishes and counties crossed and recrossed one another, and were often complicated by municipalities, Local Boards, and other organisations of a special kind. Nearly all these authorities had power to appoint officers and to lay rates. Nowhere had the least regard been paid to uniformity of areas or convenience of administration.

A strong central authority, with control over the whole sphere of internal administration, might have prevented or mitigated these evils. But no such central authority existed. Upon this the report commented with the utmost emphasis as the gravest defect of English local government. Such central functions as existed were parcelled out between the Poor Law Board, the Home Office, the Medical Office, the

Privy Council, and the Board of Trade. Nor was there any regular system of inspection by the central over the local authorities. To amend these deficiencies the report made the following proposals for constructive legislation :—

Recommendations of the Commission.

1. In regard to towns, local government should be entirely in the hand of a single authority—which should be, in municipal boroughs, a Town Council, in other places of more than 3000 inhabitants a Local Board.

2. In regard to rural districts,—that is to say, all districts not governed by Town Councils or Local Boards,—the report recommends that the Poor Law Union should be the administrative district and the Poor Law Guardians the administrative authority. The Union was equipped with officials and was in working order, whereas the machinery of the parish was too rusty and antiquated to be adapted for administration. The Commissioners further recommended that in the common enough case of a Union being partly urban and partly rural, the Guardians representing the urban part should be excluded from the new rural authority. In such cases, of course, the rural sanitary districts would only be a part of the Poor Law Union. It was also suggested that Guardians and members of Local Boards should remain in office, like Town Councillors, for three years instead of for one, a third of their number to be elected yearly.

3. The Commissioners next proposed that the purely permissive character of the Public Health Acts should be so far changed as to entitle the central authority, on their own initiative and without regard to the wishes of the inhabitants or their representatives, to impose a sanitary organisation upon any urban district not hitherto provided.

4. Last and most important comes a proposal for the erection of a strong central body. The broken bits of the old Central Board of Health should be united again and then combined with the Poor Law Board into one great department of government, with a large staff of officials capable of controlling and inspecting the administration of poor laws and sanitary laws alike. It was suggested that this central authority should have power, on the complaint of one of its inspectors, to compel a Local Authority to perform its duty.

It should have power also to issue orders and regulations binding upon the local authorities, with a view to securing that the uniformity provided for in the laws should not be lost in their administration. Central control over local expenditure should be especially stringent. At the same time the report contains a warning paragraph. Let the new department avoid the rock on which the old Board of Health came to grief. Local government is the business of the local authorities; all that the central department has to do is to give them information and guidance—to apply the whip or the brake.

The grand purpose of these recommendations was to actualise the sanitary laws, to give full and general effect to their provisions. These provisions may be classified into two main groups. In the first group were certain powers granted to urban sanitary authorities with regard to such matters as gas and water supply, the removal of refuse, etc. This group may be compendiously described as the law of public health proper, and only a few of its many sections (such as those relating to the making of sewers and the provision of drinking water) were compulsory. The rest were purely optional—duties and powers which might be undertaken or not by the Local Authority at pleasure.

Classification of sanitary laws.

The second group was composed of all the provisions of the Nuisance Removal Acts, which applied equally to urban and rural districts. These defined certain things as public nuisances,[1] *i.e.* as things against which the Local Authority was bound to provide by a proper system of inspection. For these public nuisances the Local Authority was made responsible, and was enabled to proceed against offenders in a court of summary jurisdiction. And should a householder fail, after receiving due notice, to make necessary repairs or improvements in the drainage of his house, the Local Authority was entitled to make the alterations itself and send in the

[1] In English law nuisances are public or private. The general rule is that a civil action for damages, or an injunction, can only be brought for a private nuisance. A public nuisance belongs to the sphere of criminal or quasi-criminal law, and is to be suppressed by indictment, or information, or (as above) by proceedings under statute for a penalty.

bill to the offender. The report proposed that the Central Board in its turn should be entitled, in case the Local Authority failed in its duty, to take the matter in hand and charge the Local Authority with the costs.

Thus there would be a safeguard against the compulsory duties imposed on local authorities being neglected; and such a safeguard could only be obtained by the introduction of an effective system of central control framed after the pattern of that which already existed in the administration of the Poor Laws.

Finally, the Commissioners, after suggesting a number of useful additions to and changes in the existing body of sanitary law, as well as its codification in a single comprehensive statute, completed their laborious report by submitting a draft code in the form of a carefully prepared commentary on the existing laws of public health.[1]

Results of the Report, 1871-75.

So deep and lasting was the impression produced in and out of Parliament by the publication of this admirable report, that not a single one of its more important recommendations can be said to have been disregarded. Indeed, their form as well as their substance was to a great extent adopted in the series of statutes which followed. In 1871 a Local Government Board was created,[2] and in 1872 some of the functions properly belonging to local government, but then exercised by the Board of Trade and by the Home Office, were transferred to it. In the same year the whole organisation of local government as sketched out in the report was made law with only slight modifications. In 1874 the sanitary duties of local authorities were greatly extended; and finally, in 1875, all the laws relating to public health were revised, codified, and superseded in the great Public Health Act of 1875.[3] This new code of

[1] See Second Report of the Royal Sanitary Commission, vol. i. (pp. 1871, c. 281).

[2] By 34 and 35 Vict. c. 70. The first President of the Local Government Board was Sir James Stansfield, a member of Mr. Gladstone's first Cabinet. He is sharply criticised in Sir John Simon's book (*op. cit.*), p. 354 *sqq.*

[3] 38 and 39 Vict. c. 55. The standard editions are those of Glen and Macmorran. The want of a similar consolidation of Poor Law statutes and of rating law is severely felt. For the importance and value of codification, see an article in *Quarterly Review*, 1900, and the important work on *Legislative Methods and Forms*, by Sir C. P. Ilbert, in which part of that article is reprinted.

Public Health, which still stands almost in its entirety, is itself a consolidation (with amendments) of no fewer than 43 statutes, and is, alas, one of the few important and successful pieces of codification yet passed into law. In 343 sections and 5 schedules the whole of the English sanitary code and the organisation of local sanitary authorities was set out in a clear, methodical, and orderly manner.

Local government in England had now got for the first time a comprehensive and fairly intelligible system of administrative authorities suited to modern requirements. Town Councils, Local Board and Improvement Commissioners (the last-named bodies dwindling in number year by year) were henceforward the "Urban Sanitary Authorities" for the administration of the Act of 1875, while the Boards of Guardians served as "Rural Sanitary Authorities" for the same purpose. And at the head and centre of the whole new system stood a well-equipped department of government as administrative authority for the supervision and control of all local administration.

Grants-in-aid.

In our account of the creation of the Local Government Board, and of the relations between the central government and local authorities, one important subject has been neglected and now demands particular consideration. We refer to the peculiarly English invention by which the financial subordination of the local to the central authority, a subordination in itself highly repugnant to English ideas, has been made to appear, not indeed a popular and agreeable, but at least a just and expedient incident of local government. This invention or device is known as imperial relief of local burdens. The relief takes the form of "grants-in-aid"; and a full history of the origin and growth of grants-in-aid would be identical with a history of the relations between national and local finance in England. Such a history is forbidden by the scale of our undertaking. The present chapter permits a brief survey. The theoretical and controversial aspects of a problem which is already pressing for the attention of Parliament must be reserved for a later part of this book.

It was an ancient and fixed principle of English law and administration that the costs of local government and local

justice should be defrayed, not out of national funds or national revenues, but out of taxes specifically local, gathered by local officials from the inhabitants of the district forming the area of the local authority or court by which the expenses had been incurred. Such taxes were usually called rates.[1] Thus the expenses of county government were defrayed by the county rate, those of municipal government by the borough rate. Parochial administration, comprising the relief of the poor, the repair of highways, etc., was paid for out of the poor rate, which had formed ever since Elizabethan times the corner-stone of local taxation. County rates, however, were exceptional for a long time. At the beginning of the reign of George II. there were some 40 local varieties of the county rate with many peculiarities in modes of assessment. Uniformity was at length introduced by 12 Geo. II. c. 29, which enacted that the county rate should be based upon the poor rate assessment. Apart from this statute and certain fluctuations of practice and case law as regards the rateability of personalty and stock-in-trade, the English law of rating remained practically unaltered during the whole of the eighteenth century and a third of the nineteenth century. How rigorously Parliament abstained from providing out of the national revenue for local burdens and how few of the expenses of internal administration or even of justice were treated as national, may be illustrated by a single instance.

The old principle of local taxation.

Until the year 1752 the cost of a criminal prosecution at assizes or quarter sessions had to be borne by the prosecutor. In that year an Act of Parliament (25 George II. c. 36) was passed empowering the Court, where a conviction for felony had resulted from such a prosecution, to order the county or quarter sessions borough, as the case might be, to make reasonable compensation to the prosecutor. The provision was afterwards extended to other offences. But it was not until 1835—after the report of Lord Althorp's select committee to inquire into county rates—that these expenses came to be regarded as in part national, and that a vote was taken to relieve the local authorities of

Its first modifications.

[1] Cf. Cannan's *History of Local Rates in England;* and Gneist, *Self-Government*, pp. 116-126.

one half the expenses (£80,000) of all prosecutions at assizes and quarter sessions. From 1846 to 1888 the whole of these expenses were charged on the Civil Service votes. This austere abstinence of Parliament from intervention in local finance did not, of course, exclude grants of money to individual localities. Of these special grants there is one curious survival. The bridge of Berwick was built by James I. and repaired by Cromwell's Parliament. Charles II. granted the Corporation of Berwick a sum of £100 a year to keep the bridge in repair; and the grant (which now amounts, less fees, to £90 : 9s.) has been paid ever since. Until the death of George IV. it was paid out of the Civil List. From that time to the present the grant has been included in the vote for "Miscellaneous charges and other allowances, Great Britain," Class VI. (vote 3 in 1902), of the Civil Service Estimates.

"The first occasion," writes Sir E. W. Hamilton,[1] "on which the question of the burdensome nature of rates seriously engaged the attention of Parliament, and on which at the same time action was taken, was toward the close of Lord Grey's Government in March 1834. On the motion of the Chancellor of the Exchequer, Lord Althorp,[2] a Select Committee was appointed to inquire into the county rates in England and Wales, and to report what regulations might be adopted to diminish the pressure of local burdens on owners and occupiers of land. But as the reform of the Poor Law administration was then under consideration, poor rates were excluded from the scope of the inquiry." The committee found that certain charges for prisons, prosecutions, and inland communications, which were defrayed out of local rates, were of national importance and general utility, and might more properly be placed on "those funds to which the general mass of property throughout the country contributes more equably than it does to the county rate."

The debate and Committee of 1834.

The Committee made various recommendations for the relief of local rates, two of which, as we have seen, were adopted

[1] In his masterly *Memorandum on Imperial Relief of Local Burdens*, prepared for the Royal Commission on Local Taxation.

[2] Hansard, vol. xxi. p. 1349. For the Committee's Report, see House of Commons Paper, No. 542 of 1834.

by Lord Melbourne's Government in the following year (1835). In 1839 a Royal Commission on Police (appointed in 1836) reported in favour of providing a quarter of the cost of efficient local constabulary out of national funds; but nothing came of the suggestion until 1846. The great work of Sir Robert Peel's second Administration (1841-46) was the reform of the tariff. Already, in 1845, though high duties on imported corn still remained, many duties upon agricultural produce had been reduced or swept away, and "the agricultural interest" was clamouring for compensation. A member of Parliament named Miles moved[1] that in the disposal of the budget surplus due regard should be had to the claims of the agricultural interest, and proposed that the State should not only bear the whole cost of assize prosecutions and of the maintenance as well as the conveyance of committed prisoners, but should also contribute half the cost of county prisons and coroner's inquests, and the whole cost of the registration of voters. These charges for England and Scotland he computed at £350,000. Sir James Graham, then Home Secretary, objected, first on the ground that the burden of poor relief, which constituted a first charge on land, had been appreciably diminished since the amendment of the Poor Laws; secondly, because land had no right to claim exemption from burdens, so long as it enjoyed a protective tariff, which had been imposed in consideration of those burdens. Sir Robert Peel added a further argument against the motion: the proposed transfers of local burdens to the Consolidated Fund would not really benefit the agricultural interest; for the cost of the services would certainly increase, and the more that was imposed on that fund the more would ratepayers, who were also taxpayers, have to contribute to it.

Demand for relief of the agricultural interest.

In the following year, however, the resistance to the policy of grants in aid broke down, though only one of the arguments adduced in favour of the older principle in 1845 had lost its force. Slowly as they had been converted to the principle of Free Trade, Peel and Graham yielded with perhaps greater reluctance

Sir Robert Peel's concessions in 1846.

[1] Hansard, vol. lxxviii. p. 963. The above summary is borrowed almost *totidem verbis* from Sir E. W. Hamilton's *Memorandum*.

to the pressure of the agricultural ratepayer or rather of the agricultural rent-receiver. The repeal of the Corn Laws was accompanied by an undertaking to transfer certain local burdens, amounting in all to an annual sum of £341,000, from the rates to the exchequer.[1] This, the first important instalment of grants in aid of local taxation, was avowedly intended to compensate Ireland and the rural parts of England and Scotland for any loss which they might suffer through the adoption of Free Trade. But Sir Robert Peel was careful to point out that in almost every case the State subvention carried with it some guarantee of improved administration. He laid down the principle that grants in aid should be ear-marked for special purposes, and should be made to depend upon the efficiency of the service performed.

The Protectionist party was not satisfied by these concessions, and for some years a lively but ineffectual agitation for further relief was maintained under the leadership of Mr. Disraeli. In 1850 the House of Lords appointed a Committee on parochial assessments which recommended that "stock-in-trade" as well as real property should be rated to poor relief, since poor relief was a national object to which all forms of property should contribute.[2] The Legislature, however, has never accepted this view. The next step was taken in 1856, when a Police Act[3] provided (in accordance with proposals of the 1836 Commission) that Parliament should pay one-fourth of the cost of maintaining every local police force certified to be efficient. The results of this legislation were considered highly satisfactory, and grants came to be regarded as a convenient device for securing central control, avoiding friction, and increasing the efficiency of administration. Nevertheless, it was a device to be used sparingly, if at all. The danger of its extension to inappropriate cases was most felt by those most conversant with finance, and no sufficiently strong case was thought to have been made until the duties

Further demands and the police grant.

[1] These subventions included grants to Poor Law authorities and for the payment of the Irish constabulary.

[2] House of Lords Paper, No. 150 of 1850. Cornewall Lewis's evidence given before the Committee is worthy of study, p. 313 *sqq.*

[3] 19 and 20 Vict. c. 69.

and expenditure of local authorities were increased by the sanitary legislation of the early seventies. Sir Massey Lopes's various motions for the relief of ratepayers had kept the subject before Parliament, and Mr. Goschen's able report on local taxation [1] (1871)—which showed that in thirty years rates in England and Wales had doubled [2]—was not adverse to the cry for State aid. In 1867 Mr. Goschen had suggested the transference of the inhabited house duty from the imperial to the local authority. In 1870 he further advised [3] a division of the rates between owners and occupiers—a reform which would harmonise with the two great principles of local taxation, contribution according to benefit and contribution according to ability. Mr. Goschen's investigations had proved that the real grievances of local finance were grievances not of the agricultural landowner, but of the urban occupier, who bore the whole burden of an increased expenditure which benefited the urban landlord and raised urban rents. The Bills of 1871, which would have transferred the inhabited house duty and divided the rates between owner and occupier, were dropped, having served no other purpose than to cool the ardour of Sir Massey Lopes and the squires. Nevertheless, in the following year, Lopes's resolution in favour of transferring further local charges (Justice, Police, Pauper, Lunacy) to the Consolidated Fund was carried by a majority of 100. Mr. Gladstone, however, would not act upon this resolution, except that in 1873 a special grant of £100,000 was voted to defray half the salaries of medical officers of health and inspectors of nuisances. There were ample surpluses at Mr. Gladstone's disposal; but he preferred to continue the reduction of the sugar duties and of the Income Tax, and ended by making the abolition of the Income Tax the text of his appeal to the country in 1874.[4] Mr. Disraeli's principle

Mr. Goschen and Sir Massey Lopes.

Mr. Gladstone and Sir Stafford Northcote.

[1] Reprinted in 1893 as House of Commons Paper, No. 201 of 1893.

[2] Having risen from eight to sixteen millions. Of the increase, five millions were attributable to town improvements, and at least six and a half millions had fallen on urban districts.

[3] In his famous draft report, House of Commons Paper, No. 353 of 1870. See also his "Reports and Speeches on Local Taxation."

[4] For the system of grants-in-aid cf. also Simon, *op. cit.* p. 370 *sqq.*; Sidney Webb in *Municipal Journal*, 1899, pp. 1313-19.

naturally resulted in a large instalment of relief to local taxation. In his very first budget, the new Chancellor of the Exchequer (Sir Stafford Northcote) devoted part (£1,250,000) of his large surplus to the relief of the ratepayer. He increased the grant-in-aid of police from a quarter to a half of the cost of maintenance. He provided for a grant-in-aid of 4s. weekly per head on account of pauper lunatics; and contributions were also voted to all parishes containing government property. Though these proposals were of course carried, they did not meet with Mr. Gladstone's approval. They contained no safeguards against local extravagance, and no guarantees of improved administration. Mr. Gladstone also objected to the transaction as a transfer of money from a fund supported by property to a fund supported by capital and labour jointly. The budget of 1874 brings the history of imperial grants-in-aid to a point at which logic and chronology permit us to pause. Their later history will be found in the chapter which succeeds. It is a record of degeneration. The earlier grants-in-aid were for national purposes and were intended to secure efficiency. The later grants assume more and more the character of mere doles to relieve some favoured class out of the purse of the general taxpayer.

Objection to the grants-in-aid of 1874.

While this device of financial aids softened the resistance to central control and helped to appease the outraged feelings of local autonomists, the grip of the centre upon the circumferences was being constantly tightened by the growth of officialdom. The staff of the Central Boards naturally increased with their work. More clerks sat in the London offices of departments answering letters, issuing regulations, compiling statistics, and drafting reports. More inspectors invaded the provinces to overhaul the accounts, and expose the misdeeds of local authorities, to hold inquiries into schemes of improvement or extensions of boundary, and to report regularly to the central department. But the increase in the numbers and discipline of local officials was even more significant. The provisions of the Poor Law Act which regulated the relations of the paid officials of local authorities to the Commissioners had been extended with amendments to other branches of local administration wherever

The increase of inspection.

such officials received their pay wholly or in part from Parliament.

Omission of the parish from schemes of reform.

It is remarkable that the middle classes, in reforming and reorganising the internal administration of the country, entirely neglected the parish. To understand the omission, a brief retrospect is necessary. The first attempts to reform the Poor Laws had proceeded on the assumption that the problem of pauperism could best be solved by an improvement of parochial machinery. Thus the Gilbert Acts of 1782 enabled parishes to combine for Poor Law purposes, and, having so combined, to appoint paid officers. In 1818 the General Vestries Acts were passed to give effect to the doctrine that payment of rates should carry with it a proportional representation on the body which spends them. The Acts provided that for Poor Law purposes a scale of from one to six votes should be introduced according to the amount contributed by members to the rates. In the following year, the Select Vestries Acts applied the same principle to select vestries which might thereafter be formed by the six class system of voting instead of by co-option. These Acts were only permissive. But the Select Vestries Acts were very widely adopted, and were in force in no fewer than 2349 parishes in 1831. The so-called Hobhouse Acts passed in that year allowed the new elective type of "Select Vestry" to be made the authority for carrying out all parochial functions in parishes containing more than 800 ratepayers.[1] This legislation, while it did something to repair the scandalous misgovernment or anarchy then prevailing in the outgrowths of London and other newly-populated districts, produced results very unfavourable to democracy. The Common or Open Vestry was the only element of pure democracy in the English constitution at that time; and it was also the local institution which had suffered least from the encroachments of class rule, and from the autocracy of the Justice of the Peace. Unfortunately a form of organisation which consisted in an assembly of all the inhabitant householders could not maintain itself where the small village community

[1] For the history of parish government, cf. Gneist, *Self-Government*, chap. ix.; Mackay, *op. cit.* p. 332 *sqq.*; Blake Odgers, *Local Government*, p. 35 *sqq.*

had developed into a populous hive of industry. The natural development would have been in all these cases from the mass meeting, where all were equal, to a parish council elected by a democratic suffrage. Thus the problem would have been solved by a simple application of the representative principle. But the legislation above described made such a development difficult, and the middle-class ideas which prevailed in the great reform of 1834 robbed the lower orders of another of their ancient rights, by depriving them of all share in Poor Law administration. With the establishment of Boards of Guardians the Vestry was reduced to little more than a shadow. It had already begun to lose another immemorial function. The parish constable, the laughing-stock of literature, had already been supplemented or superseded in the large towns, and was actually abolished in London by a Conservative Ministry in an unreformed Parliament. The abolition of Church Rates in 1868 completed the downfall of the Vestry. A few half-hearted attempts had been made to entrust it with some further functions of sanitation and police; but these efforts had altogether failed—to judge from the report of the Commission of 1869. By that time the parish was a lifeless and empty form, a historical organisation without any administrative work. The business of local administration was in the hands of Guardians, Local Boards, Municipal Boroughs, Petty Sessions, and Quarter Sessions. One only of its old functions was retained by the parish. It was still the financial unit. Its overseers were still performing the first and most indispensable step in the raising of local revenues. They issued the precept, kept the rating books, and also the list of those qualified to vote. But of course the necessity for electing overseers was not enough to keep the Vestry alive.

There can be no doubt that with parish government an element originally sound and healthy disappeared from English life and politics. And the loss was all the more serious because it occurred just when the education of the masses ("our masters") had become a political necessity. Local government is the best education for political work. A share in the public life of his district is the best preparation to fit a man for the exercise of the Parliamentary franchise. As

middle-class rule began to drift into democracy, an idea of reviving the parish assembly sprang up. In our next chapter we shall see how this idea grew until it finally bore fruit in the Parish Councils Act of 1894.[1]

The Reform of county government.

But if, in their reorganisation of the Poor Law authorities and treatment of the Vestries, the middle classes showed a distrust of the people which contrasts with the popular character of their municipal reforms, their policy appears in a light still more unfavourable when we pass to the problems of county government.

The idea of reforming county government started with the old Radical cry for retrenchment, and with the companion motto that taxation implies representation. Let the representative principle therefore be applied to the county benches. Accordingly in 1835 a Commission was appointed on the motion of Joseph Hume to inquire into the administration of county finance. Its report appeared in 1836, and was followed by a County Board Bill. This Bill, which was introduced by Hume, is the first of a long series of attempts to substitute an elective authority for the old bench of nominated Justices. The memory of municipal reform was still fresh, but the Bill was introduced late in the session, and did not get beyond its first reading. A thoroughgoing Radical, Hume wanted to strip the Justices of their administrative functions, and hand these over bodily to the new authority, a County Board elected like a reformed Town Council directly by the ratepayers. Hume's object was to remedy what he called "the

Joseph Hume.

[1] On the reasons why the old parish assembly was not developed into a representative council in cases where the population became too large for direct popular administration, cf. Mr. Sidney Webb's lectures on the "Evolution of Local Government," delivered at the London School of Economics, and often referred to in these pages (*Municipal Journal*, 1899, pp. 1200 and 1248). Mr. Webb considers that until the beginning of the nineteenth century quite a large number of town and country parishes were vigorously administered under the old form of Open or Common Law Vestry. He further suggests that the bitter hatred and contempt undoubtedly entertained for the Whigs by large sections of the working-classes were especially due to the series of Whig measures which destroyed the remnants of local democracy. If this view be correct the destruction of the Vestry contributed much to the strength of the Chartist movement.

inherent defect of the present system," "the principle of which is that those magistrates who levy and direct the expenditure of the rates are independent of those who pay them." Hume made good use of the report of the Committee on county rates, and of the varying principles and modes of assessment there shown to prevail in the different counties.[1] But his main complaint was that "no responsibility attached to any of the magistrates, who have the power of assessing and expending the rates,—that there is not that wholesome check and control over the taxes in counties which has lately been extended to the municipal institutions of the country."[2] The inhabitants of counties in Great Britain had been badly treated in the Reform Act of 1832, as compared with the inhabitants of towns; for whereas, out of a town population of 5,816,000, 317,000 electors were enrolled by the Act of 1832, out of a population in the counties of 10,446,000, only 403,000 electors were enrolled. Thus the hold of the county ratepayers over Parliament was weaker than that of the town ratepayers. Parliament could not be called in to supply the want of a County Council, because Parliament only represented a small minority of county ratepayers.[3] Hume naturally laid great emphasis upon the increase in the

County Rates and County Boards.

[1] In eighteen counties the valuation was made on the amount of the property tax, as it stood in 1814. In twenty counties the rates were laid on the actual value, or some proportion of the actual value. In thirteen counties it was not known on what principle the collection was made! In one county it was in conformity with a statute of 12 George III. "It happens in some counties," said Hume, "that large masses of property are never assessed for the purpose of local taxation, and while the owners of such property derive equal benefits with the ratepayers from the application of county rates, yet they do not contribute anything towards them. It is therefore utterly impossible that justice can be done."—Hansard, third series, vol. xxxiv. p. 682 (21st June 1836).

[2] "A majority of this House and of the country has approved of the Bill for allowing the inhabitants of corporate towns and cities to elect persons to control the municipal taxation, and also to recommend magistrates for their respective cities and towns, and I ask the same privilege for counties" (Joseph Hume, Hansard, 21st June 1836).

[3] There is not much proof of financial corruption existing on a large scale in the old Quarter Sessions. But there were many strange anomalies which might deserve a strong epithet. Thus forty Enclosure Acts were passed in the early years of the nineteenth century for the county of Dorset, yet so late as 1836 these new lands paid no county rate.

expenditure out of county rates, which he showed from a comparative statement for the years 1832 and 1792. It was drawn up by a Committee of the House of Lords in 1834, and is of sufficient interest to deserve reproduction here:—

Heads of Charges.	Expenditure of the County Rates in England and Wales.		Net Increase.	Total Increase Per Cent.	Increase per cent where ascertainable.	
	1792.	1832.			In England.	In Wales.
1. Bridges, etc. .	£42,237	£74,501	£32,264	76	69	144
2. Gaols, Homes of Correction, etc.	92,319	177,245	84,926	92	90	156
3. Prisoners' maintenance . .	45,785	127,297	81,512	178	170	341
4. Prosecutions .	34,218	157,119	122,901	359	349	671
5. Constables .	659	26,688	26,029	4338	4326	1100
6. Professional .	8,990	31,103	22,113	248	249	241
7. Salaries . .	16,315	51,401	35,086	215	205	566
8. Vagrants . .	16,807	28,723	11,916	70	77	Decrease of 94
9. Lieutenancy and Militia .	16,976	2,116	Decrease of 14,860	...	...	...
10. Coroners . .	8,153	15,254	7,101	87	86	105
11. Incidental .	17,456	32,931	15,475	88	97	5
12. Miscellaneous, printing, etc. .	15,891	59,062	43,173	...	...	...
Total .	£315,806	£783,442	£467,635	148	...	...

Hume admitted that an alternative Bill to his own might have been drawn by transferring the administrative and financial powers of Justices not to a new authority, but to the Poor Law Guardians established ten years before. To that he objected for several reasons:—

> First, because the Poor Law Unions ought to be an inferior Board, and subservient to this Board which should be paramount in the county; secondly, because the unions are formed from different counties; and thirdly, I have a yet stronger objection in the fact that the guardians of the poor are elected by a plurality of votes, a variable qualification at the will of the Poor Law Commissioners, who are appointed by the Crown, and thus county affairs might be influenced by Poor Law Commissioners and by the Crown. Besides (fourthly) Unions are not yet established over half the country, and my wish is to extend the operation of the now proposed measure over the whole country at once.

This weighty and interesting speech, of which we fortu-

nately possess a corrected and verbatim report (Hansard), did not lead to any debate. The Bill was allowed to be brought in, but no further opportunity for its discussion occurred in the session of 1836. Another Bill, however, was passed which remedied the anomalous system of county rates and assessments.[1] This made it necessary to modify the County Boards Bill, which was again introduced in the following February (1837). It was read a first time after an animated debate, in which the economists attacked county magistrates for their prodigality,[2] while the Tories praised their administration as "a link in the chain which bound the poor and the middle classes together."

But the Bill scared the Whigs almost as much as the Tories, though in the debate on the first reading Lord John Russell, without committing himself to its details, declared that its promoters had established a *prima facie* case. It got no further than its first reading, and for ten years the very idea of such a reform seemed to be dead and buried. However, after the triumph of the Anti-Corn Law League, and the fall of Peel's Cabinet, a strong movement of reform set in, and the veteran Hume returned in 1849 with a County Rates and Expenditure Bill. He showed in his speech of 13th June 1849[3] that in many different parts of the country, and especially in Lancashire, public meetings had been held and resolutions passed in favour of introducing representatives of the ratepayers into county government. In spite of grants-in-aid, county rates were rising steadily,[4] and every increase in expenditure aggravated the grievance of the farmer, and strengthened the case for reform. But the new proposals were very moderate in comparison with the old. The County Boards were to be composed half of Justices,

County Reform after 1846.

[1] 15 and 16 Vict. c. 81, which amended and consolidated the law relating to the collection and assessment of county rates, and ordered county treasurers to publish an annual abstract of their accounts.

[2] Mr. Potter quoted as an example the Castle of York, "to which the walls of Babylon were nothing." Those who know York Castle will appreciate the comparison. Mr. Ewart blamed Sir Robert Peel for not having placed the Metropolitan police under a municipal government, and pointed out that even a despotic government like Prussia had long ago had County Boards.

[3] See Hansard, third series, vol. cvi. p. 125.

[4] The poor rates in the meantime had been falling.

and half of members nominated by the Boards of Guardians for the county. Such a measure could hardly produce much enthusiasm. It was dropped after some long and tedious debates. In 1850 Milner Gibson, one of the ablest members of the Manchester School, revived the question by bringing forward a second County Rates and Expenditure Bill, which would have created a County Board composed half of Justices, half of direct representatives of the ratepayers. It was generally conceded in the debates which followed, that the representative principle ought to be extended to county administration, but it was urged at the same time (with some force) that the expectation of retrenchment was not well grounded. The ratepayers would not be likely to find more economic representatives than the Justices assembled in Quarter Sessions. The great Sir Robert Peel declared himself in favour of the principle of the Bill, thus giving in the last year of his life another proof of his political expansion. His countenance, however, did not save the Bill. It was referred to a Select Committee which reported against it, and its supporters failed to secure a majority for the second reading. Similar Bills in 1851 and 1852 were equally unsuccessful, as was that introduced by Sir John Trelawney in 1860. In 1868 Hume's second proposal was revived as a purely permissive measure, but without success, though two distinct Bills to create "County Financial Boards" were brought forward.[1] One of these Bills was shelved by an amendment to appoint a Select Committee of Inquiry.[2] The Committee reported in July,[3] and in the following February it was announced by the new Liberal Ministry, in a paragraph of the Queen's Speech—Mr. Gladstone having won a great victory at the polls—that "a measure will be introduced for applying the principle of representation to the control of the county rate by the establishment of financial boards for counties." Unfortunately the drafting and conduct of the Bill were left to Mr. Bruce, whose legislative essays were seldom fortunate, and to Mr. Knatchbull-Hugessen, one of the least competent

[1] See General Index, Hansard, 1868, under the title County Financial Board (two Bills). See for No. 1 Bill, Hansard, 6th March 1868. Mr. Wyld moved that County Financial Boards (No. 2) Bill, "be now read" on 29th April of the same year.

[2] Hansard, April 29, 1868.

[3] Parl. Paper, No. 421 of 1868.

members of the new Ministry. The Bill, which proposed to add members indirectly elected (by the Boards of Guardians) to the County Bench for administrative purposes, was introduced in May, and withdrawn by leave in July. It was rather a humiliating conclusion to such a series of efforts, extending over a period of thirty years, to introduce the representative principle into county government. In truth, pamphlets and political speeches notwithstanding, more light than heat attended the movement for this particular reform. The political life, and also the administrative needs of the rural population, were far behind those of the townsmen. Apart from principles, there was not very much to complain of in the adminstration of an average county bench. The landed gentry disliked the idea of a change. Even the rich merchants, still nominally Liberals, who were beginning to combine with the landed gentry, preferred the *status quo*. They were already obtaining by political influence seats upon the County Bench, and aspiring to county society. As for the agricultural labourers no one—not even Joseph Hume or John Bright — dreamed of their participation in county government. The small farmers and freeholders remained, and they no doubt would have welcomed the introduction of representative local government. But on the whole Lord John Russell was right when he told a deputation that there was no real or general demand for such a reform. The time was not yet ripe.

In dealing with the many administrative changes and projects which followed the Reform Bill, we have confined ourselves as strictly as possible to those which were distinctively local in character, or directly connected with the organisation of local government, such as the new Poor Laws, and the new laws of Public Health. The Factory and Workshop Acts are, of course, related, but in a much less immediate manner, to the subject, occupying as it were only the outer circumferences of our province. Such legislation often increased the judicial, but seldom the administrative, functions of Justices of the Peace. Most of these preventive statutes—and their number grew apace — were of a quasi-criminal nature, and were enforced by penalties recoverable before Justices. The sphere

Extension of summary jurisdiction.

of summary jurisdiction was therefore rapidly extended, for almost every fresh instalment of internal administration added to the work of Petty Sessions. Even the new Poor Laws, which stripped Justices of so many administrative duties, did not diminish their judicial powers. As licensing authority, with an almost unchecked discretion to renew old, and grant new, licenses for the retailing of beer, wine, and spirits, the Justices retained the most valuable of all remaining branches of patronage; and they were also the authority for granting licenses to hawkers, pedlars, and the like. The Highway Acts for a time added to the administrative as well as to the judicial duties of Justices in the exercise of their traditional supervision over local communication.[1] The Public Health Act of 1875 relieved the Justices of much of the actual work of administration, so far as concerned the repair and maintenance of roads,[2] but on the other hand, the Public Health legislation multiplied enormously the summary business of Petty Sessional Courts. Indeed the Summary Jurisdiction Acts of 1848 necessarily accompanied the Public Health Act of the same year.

Justices and police.

The advance of science and the progress of humanity in the treatment of lunatics also brought the Justices of the Peace more work both of a judicial and administrative character. But no legislation so perceptibly enlarged and extended their functions as the reform of the police. The old police system had, as we have said, broken down long before the Reform Bill. As Home Secretary in the Duke of Wellington's administration, Mr. (afterwards Sir) Robert Peel had introduced and passed a Metropolitan Police Bill in 1829. At first the new police

[1] Under the Highway Act of 1835, the Justices had to appoint a surveyor if the Vestry neglected to do so. Under the Highway Acts of 1862 and 1864, the Justices of the Peace in Quarter Sessions were empowered to combine parishes into highway districts, which, being unhappily in few cases co-extensive with Poor Law Unions, added further complications to the existing muddle of administrative areas. No less than 424 highway districts were created. The Highway Board consisted of Justices resident in the highway district, and of way wardens elected by the several parishes. And even at the present time diversions and dedications of highways provide work for the Justices.

[2] See sections 144-148, etc., of the Public Health Act 1875, in virtue of which Urban District Councils are themselves "surveyors of highways."

for London were placed directly under the Home Secretary's control. In 1856 they were again reorganised, this time under Commissioners subordinated to the Home Secretary. Outside London, however, the management of the police had been transferred by the Act of 1835 to a statutory (watch) committee of the Town Council, and the improvements which followed led to some reform in the counties. In 1842 a last attempt was made to galvanise the parish constable into life. Every man of between twenty-five and fifty-five years, who paid more than £4 yearly in rates, was made liable to serve as a parish constable. But the statute has remained a dead letter, and is now, as Maitland puts it, as obsolete as the legislation of King Ethelbert. Conscription in England is impracticable even for police. Three years previously, however, a permissive Act had been passed enabling the county benches to employ a paid constabulary. Financial help was afforded by the Treasury, and central control secured as its price. In 1856[1] every county was compelled to pay and employ a police force, one quarter (and eventually one half) of the cost being defrayed by the Treasury (as in the case of the towns), provided the Home Office certified that the force had maintained a proper standard of efficiency. The grant therefore really depended upon the report of the Home Office's inspectors. Thus the Justices of the Peace in Quarter Sessions became the police authority for the whole county, and found their administration subjected for the first time to a searching form of central control, with the possibility of losing a substantial grant-in-aid if their force failed to attain the standard of efficiency required by the Home Secretary.[2]

The foregoing survey, brief as it is, will suffice to show how the functions of the Justices were multiplied, and the sphere

[1] By the Act 19 and 20 Vict. c. 69.

[2] On the history of the new police administration, cf. Maitland, *Justice and Police*, p. 104; and Captain Melville Lee's *History of Police in England* (1901). On the older forms of police organisation, see Lee, and Gneist, *Self-Government*, pp. 877-882. The optional powers conferred on Justices previously to 1856 (by 2 and 3 Vict. c. 93, and 3 and 4 Vict. c. 88) were not largely exercised; nor in boroughs did the Act of 5 and 6 Will. IV. c. 76 (which purported to make the establishment of a sufficient police force compulsory) give any power to the central government to enforce the maintenance of a proper standard. See Sir E. W. Hamilton's *Memorandum*, Appendix III.

of their jurisdiction enlarged by the great legislative changes which characterised the supremacy of the middle classes. In the urban districts their judicial gains may be set against their administrative losses. But in rural districts they had lost hardly anything. Every new duty and power (apart from Poor Law administration) imposed upon a rural authority naturally fell to the Justices of the Peace. It is true that a small instalment of central control had been introduced.[1] But all attempts to drive a wedge of democracy into county government had hitherto been utterly fruitless, though county rates had, it is true, been reformed, and provision made for the regular publication of accounts. The old ruling class still maintained its predominance in county government. If the small tradespeople and shopkeepers were to be eligible to act as town councillors, members of local boards, and guardians, at least let the bench of Justices remain the preserve of the gentry. So pleaded a Tory squire in one of the County Board debates.

Marks of middle-class rule.

But the maintenance of irresponsible government in the counties is only a symptom of the middle class attitude towards reforms of political and social machinery. Most of its enthusiasm in this direction was exhausted by the legislation of 1832-35. The Reform Bill gave it the control of Parliament, Poor Law Reform gave it a reduction in the rates; the Corporations Act gave it control of municipal government. When Free Trade, improved sanitation, and a good system of police were secured in addition, conservative sentiments began to steal over the minds of men, who were naturally more interested in commerce than in politics, and were content "to let well alone" rather than perfect the work of reorganisation, and make representative government complete. But for all that may be said in criticism of the Philosophical Radicals and of their close allies in the Manchester School (the best and dominant representatives of middle class thought and rule in mid-century England), no student of local government can be blind to the solid and enduring value of their constructive legislation in the thirty-five years following the Reform Bill. If the efforts of reform

[1] As in the case of the police.

—other than fiscal—were relaxed during the latter half of this period, the time was not wasted. Inquiries and experimental legislation prepared the way for the great reform epoch of 1868-75, which left English administration in a condition of efficiency and economy, which would compare favourably with that of any other European country. But its chief superiority lay in the frank recognition that the inner administration of a State that is dependent upon its manufactures, and based upon capitalism, must have for its great aim and object a progressive improvement in the moral, intellectual, and physical condition of the working-classes. It was coming to be understood in England that such an administration should consist in a scientific application of social principles to society. In another respect the middle classes displayed wise moderation. They preferred to improve old institutions rather than to destroy and rebuild. Without subscribing to the tenets of romantic antiquarians they were ready to make allowances for historical forms and prejudices, and to adopt compromises even at the expense of consistency and logic. In our next chapter we shall see how local government in England became completely representative and democratic, and how many of the embarrassments and anomalies which still existed in 1875 were swept away in the course of another twenty years.

CHAPTER IV

THE DEVELOPMENT OF A DEMOCRATIC FORM OF LOCAL GOVERNMENT

We have been careful, in describing the period of 1832-67 as a period of middle-class reforms, to point out that the Reform of the Poor Law, however unpopular with the masses, was in the main inspired and contrived by the philosophic leaders of Radicalism, and that the measure which reformed municipal corporations was a great and significant concession to democratic ideas. But Parliament soon began to reflect the spirit of privilege, and the disinclination of a small though enlarged electorate to extend the franchise further. Ministers faltered in the work of reorganising local administration, and all but suspended the work of democratising local institutions. Progress lost pace, and legislators had almost begun to mark time when a new impulse was given to the development of local government by a second Reform Bill. This Reform Bill—though earnestly and even vehemently demanded — was not preluded by the violent and revolutionary scenes which extorted the first. The middle classes were less afraid of the democracy than the old oligarchy had been of the middle classes. And one of the faithful leaders who had won free trade led the movement for the second Parliamentary reform. Indeed, the electorate established by the Act of 1832 was liberalised rather than coerced. From 1852 onwards, Reform Bills were introduced and discussed in Parliament. When Mr. Gladstone in a memorable speech[1] virtually accepted Mr. Bright's position, and declared that the working-classes are "our own flesh and blood," it was felt that the introduction of a more democratic franchise could not long

The second Reform Bill.

[1] Hansard, 11th May 1864, on Baines' Borough Franchise Bill.

be delayed. The death of Lord Palmerston removed the last obstacle to reform; for the old Conservative party, under the tuition of Mr. Disraeli, was learning to be the instrument where it could not be the successful opponent of democracy; and Mr. Gladstone's Reform Bill of 1866 had hardly been defeated when a similar and (after Radical amendment) an even more democratic measure was carried in 1867, under the leadership of Mr. Disraeli and the auspices of the Tory party. This was a successful "dishing of the Whigs," and the first striking appearance of Tory democracy on the stage of English politics. A great change, indeed, was coming over the attitude of political parties towards the working-classes—a change due to their growth in numerical, economic, and political strength. The repeal of the Combination Laws in 1824 had left workmen comparatively free to develop by Trade Unions that consciousness of co-operative power which is invaluable, not only for bargaining with an economic superior, but also for securing political advantages. The insight of English politicians and the prudence of the governing classes were proved by their intelligent appreciation of this rising power. They saw that the working-classes in the towns were preparing to take the franchise; and they determined to forestall revolutionary agitation by a timely concession. Such was the real origin of the second Reform Bill, which conferred household suffrage upon the inhabitants of Parliamentary boroughs and swept away many anomalies.[1]

The consequences of the second Reform Act were soon felt in the political life of the country. If the Reform movement had begun with a contest it had ended, as Lowe wittily observed, in a race for popular favour. And the Act of 1867 led very speedily to a complete reorganisation of party machinery. Each party found it necessary to drill the masses for the purposes of a general election, and gradually each party developed a central organisation more or less dependent upon a federation of local organisations. Under the skilful management of Mr. Chamberlain, who began with his native town of

The reorganisation of parties.

[1] For the part played by Trade Unions in bringing about the second Reform Bill, cf. Heaton, *Three Reforms of Parliament*, p. 153, on Mr. Gladstone's Speech of 1864.

Birmingham, a thoroughly democratic form was given to each local association of the Liberal party. The central association was theoretically controlled by delegates from each local association, and was called aptly enough the National Liberal Federation. This formidable organisation (borrowed from America) was called by its enemies the Caucus, and no doubt contributed to the Liberal victory of 1880. The National Liberal Federation was founded in 1877, ten years after the National Union of Conservative and Constitutional Associations, but the older organisation has never attained the same influence over the councils of the Conservative party, which the younger has exerted over Liberal policy.[1] The local organisation of each party was admirably adapted for reproducing the national party struggle in the municipal arena; and from the year 1877 the municipal and school-board elections of large towns have been run more and more by the local Liberal and Conservative organisations—a natural, and in the eyes of some critics a very deplorable result, of which we shall have more to say in a later chapter.

Changes of political spirit.

Within a few years of the second reform of Parliament, the spirit and machinery of English politics were turned over to democracy. But the change in the franchise made little change in the *personnel* of Parliament and Government, save perhaps that candidates began to find that qualifications of wealth and of eloquence were becoming more attractive than that of birth. Before long a handful of working-men appeared in the House, but they have never been numerous. If its atmosphere is democratic that is only because the House of Commons represents the whole people, and because the labouring classes form a majority of the voters in most constituences. The proudest aristocrat can scarcely afford to disregard the interests of labour in the narrower sense of the phrase. Factory Laws and Workmen's Compensation Acts are passed to please the working-man just as the Combination Laws were passed to please the employer. The Reform of 1867 marks therefore another epoch in the practice and theory of the English

[1] On party Caucuses in Great Britain, cf. Franqueville, *le Gouvernement et le Parlement Britanniques*, ii. pp. 356 *sqq.*; Dickinson, *Development of Parliament*, pp. 80, 81.

constitution. On the one hand it had been argued with consummate skill in the famous debates of 1866 by Robert Lowe, and lesser Liberal *frondeurs*, or Adullamites (as they were called), that the franchise should not be extended except on proof that a Parliament resting on a democratic franchise would do better and more useful work than the Parliament resting on the narrow franchise of 1832. On the other hand stood the conception expressed in Mr. Gladstone's speech of 1864:[1] —

> I contend that it is on those who say it is necessary to exclude forty-nine-fiftieths (of the working-classes), that the burden of proof rests. . . . Every man who is not presumably incapacitated by some consideration of personal unfitness or political danger, is morally entitled to come within the pale of the constitution.

Two years later Mr. Gladstone pressed this moral claim of the working classes to the vote, reminding the House of Commons of the many beneficial changes which had operated in favour of the working-classes since 1832. There had been a revival of religion. Popular education had been not so much improved as brought into existence. The emancipation of the press, and the vast circulation given to penny newspapers, had enabled all classes to take an intelligent interest in public affairs. Lastly, "by measures relating to labour, to police, and to sanitary arrangements, Parliament has been labouring," said Mr. Gladstone, "has been striving to raise the level of the working community, and has been so striving with admitted success. And there is not a call which has been made upon the self-improving powers of the working community which has not been fully answered."[2]

Mill as the philosopher of reform.

The philosophic source from which the reformers of the sixties drew is to be found in the political speeches and writings of John Stuart Mill, and especially in his great work on representative government, which appeared in 1861. An originator of political or constitutional theory, Mill can hardly claim to

[1] See Hansard, 12th April 1864.

[2] As late as 1859 Mr. Gladstone had argued in favour of small boroughs, as an avenue by which young men of talent might find their way into Parliament. A good exposition of the case for reform may be read in Brodrick's *Essays on Reform*, especially at pp. 10, 22. The change of society required a change of the franchise.

be; yet he certainly made great and lasting contributions to the development of English democracy. He may be said to have done for democracy what Chadwick did for administration; for he rid the ideas of Bentham and the older Radicalism of their pedantries and rationalistic absurdities, passing them through the filter of a mind well versed in affairs, and not inclined to pass an impracticable scheme, however clearly it might appear to flow from the principle of general utility. And moral considerations were mingled, at the expense of consistency, with the Utilitarian theory. Finally he possessed the supreme virtue of lucidity, which helped to make his teachings not only convincing but popular.

In his great essay *On Liberty* (1859), Mill had already expressed the view that a people should not only elect its governors, but share in the work of government,— that there should be central and local organs as well as central and local officers. There should also be "a central superintendence, forming a branch of the general government." The central department "should have a right to know all that is done, and its special duty should be that of making the knowledge acquired in one place available for others. Emancipated from the petty prejudices and narrow views of a locality by its elevated position and comprehensive sphere of observation, its advice would naturally carry much authority; but its actual power as a permanent institution should, I conceive, be limited to compelling the local officers to obey the laws laid down for their guidance." Such, he explained, "in its general conception," was the central superintendence exercised by the Poor Law Board over the Local Guardians. The problem of pauperism was a national matter, and Mill therefore recognised the propriety of an extension of the central power. But he was careful to point out the exceptional character of this case—

Mill, *On Liberty*.

> Whatever powers the Board exercises beyond this limit, were right and necessary in that peculiar case for the cure of rooted habits of maladministration in matters deeply affecting not the localities merely, but the whole community, since no locality has a moral right to make itself by mismanagement a nest of pauperism, necessarily overflowing into other localities, and impairing the moral and physical condition of the whole labouring community. The powers of administrative coercion and subordinate legislation possessed by the Poor Law Board (but which,

owing to the state of opinion on the subject, are very scantily exercised by them), though perfectly justifiable in a case of first-rate national interest, would be wholly out of place in the superintendence of interests purely local. But a central organ of information and instruction for all the localities would be equally valuable in all departments of administration.

Representative Government is a complete and yet concise statement of the theory of representative democracy, drawn out to its logical consequences by a convinced yet temperate advocate; and its arguments formed the stock-in-trade of the Liberal and Radical reformers of the succeeding decade.

Mill's *Representative Government.*

In the *Considerations on Representative Government*, a remarkable chapter (XV.) is devoted to local representative bodies, and the hints already given in the essay *On Liberty* are worked out in more detail, and with special reference to England. Starting with an observation upon the proper limits of governmental action, Mill points out, that "after subtracting from the functions performed by most European governments, those which ought not to be undertaken by public authorities, there still remains so great and various an aggregate of duties that, if only on the principle of division of labour, it is indispensable to share them between central and local authorities."

Local self-government as an education.

A government, however despotic or bureaucratic, must have purely local officers; and a popular government can only exert a popular control over these officers by means of a separate local organ. "Their original appointment, the function of watching and checking them, the duty of providing, or the discretion of withholding the supplies necessary for their operations should rest, not with the national parliament or the national executive, but with the people of the locality." This function might be exercised by a meeting of the people of the locality, as in some states of New England.[1] But direct local government is

[1] "Highly educated communities" which "are so well satisfied with this primitive mode of local government, that they have no desire to exchange it for the only representative system they are acquainted with, by which all minorities are disfranchised" (*Representative Government*, chap. xv.). Mill was of course a strenuous advocate of the representation of minorities; cf. chap. vii. of *Representative Government*. His ideas, and those of his distinguished disciple, Mr. Leonard Courtney, have only been carried out in the sphere of popular education.

rarely practicable, and "recourse must generally be had to the plan of representative sub-parliaments for local affairs." In the public education of the citizens, municipal and provincial councils, or sub-parliaments, are the chief instrument. Local functions educate the lower grades of society as well as the higher; and citizens elected to serve on local bodies "have to act for public interests, as well as to speak." They cannot, like the audience of a politician, or the readers of a newspaper, be content with "passively receiving the thoughts of some one else." They have to act as well as to think, and to bear the responsibilities of action. Indeed, their political education is so important that it may, in Mill's judgment, cheerfully be preferred to administrative efficiency.

Local constitutions should be regulated by the same principles which are applied earlier in the book to national representation. Like national parliaments, local sub-parliaments should be elective; "and the same reasons operate as in that case, but with still greater force, for giving them a widely democratic basis — the dangers being less, and the advantages in point of popular education and cultivation in some respects even greater." Then follows an interesting passage in which Mill first declares that there should be a provision for the representation of minorities; and secondly, admits not only that the suffrage should be confined to ratepayers, but that even the class system may be justified. If he is in favour of a national democracy he is not apparently opposed to a local timocracy.

As the principal duty of the local bodies consists of the imposition and expenditure of local taxation, the electoral franchise should vest in all who contribute to the local rates, to the exclusion of all who do not. I assume that there is no indirect taxation, no *octroi* duties,[1] or that if there are, they are supplementary only; those on whom their burden falls being also rated to a direct assessment. The representation of minorities should be provided for in the same manner as in the National Parliament, and there are the same strong reasons for plurality of votes. Only, there is not so decisive an objection, in the inferior as in the higher body, to making the plural voting depend (as in some of the local elections of our own country) on a mere money qualification; for

[1] At that time the London coal and wine dues were still in force, and went to relieve the London ratepayer. *Octroi* duties existed in some towns of Scotland until the very end of the nineteenth century. In India they form the main source of municipal revenue.

the honest and frugal dispensation of money forms so much larger a part of the business of the local than of the national body, that there is more justice as well as policy in allowing a greater proportional influence to those who have a larger money interest at stake.

Applying himself next to the existing institutions of local government in England, Mill finds many causes for dissatisfaction, most of all in the failure to apply representative principles to county government. The administration of counties by Quarter Sessions was the most aristocratic feature of English government, the House of Lords itself not excepted; for the Justices, unlike the Peers, formed a single independent body, and had uncontrolled expenditure of public monies. Nor was there any reason why even the squires should support the system, since they would have little more difficulty in being elected for a county Board than in being nominated to serve on the county bench.

Mill on county government.

Regarding what he calls "the proper circumscription of the constituencies which elect the local representative bodies," Mill holds that the only just and applicable principle is community of local interests. Thus every town should have one, and only one, municipal council, because "the different quarters of the same town have seldom or never any material diversities of local interest." Upon that cardinal principle swings a severe criticism of London government—

> The subdivision of London into six or seven independent districts, each with its separate arrangements for local business (several of them without unity of administration even within themselves), prevents the possibility of consecutive or well-regulated co-operation for common objects, precludes any uniform principle for the discharge of local duties, compels the general government to take things on itself which would be best left to local authorities, if there were any whose authority extended to the entire metropolis, and answers no purpose, but to keep up the fantastical trappings of that union of modern jobbing and antiquated foppery—the Corporation of the City of London.

Another equally important principle laid down in this remarkable chapter is, "That in each local circumscription there should be but one elected body for all local business, not different bodies for different parts of it." The business of the elective body "is not to do the work, but to see that it

is properly done." The government of the Crown has many departments and ministers, but these have not a parliament apiece to keep them to their duty. And there is another very weighty reason adduced against the *ad hoc* principle, and in favour of uniting the control of all local business in one body. Where popular government fails, its failure is generally due to the low calibre of those who conduct it; and "it is quite hopeless," writes Mill, "to induce persons of a high class either socially or intellectually to take a share of local administration in a corner by piecemeal as members of a Paving Board or a Drainage Commission."

The executive problems of local government should be solved by the light of the same principles which apply to the central executive. In the first place, each executive officer should be single and singly responsible. Next, he should be nominated and not elected. An election of a surveyor or health officer by popular suffrage would be a farce, and, in the opinion of Mill, "appointment by the local representative body is little less objectionable," because such bodies are apt to become "joint stock associations for carrying into effect the private jobs of their various members." Accordingly, appointments should be made on the individual responsibility of the Mayor or Chairman of the body.

Mill's views on local business and central control.

The business of local authorities, or, as Mill puts it, "the sphere of their duties,"[1] is threefold. First comes the purely local business (such as paving, lighting, etc.), which is of little consequence to any but the inhabitants. Second, come many matters of national interest (gaols, police, justice, etc.), which may conveniently be placed under local management, though subject to central superintendence and uniform regulations. Thirdly, "there is also business such as the administration of the Poor Laws, sanitary regulation, and others, which, while really interesting to the whole country, cannot consistently with the very purposes of local administration be managed otherwise than by the localities." In regard to this third sphere of duties arises the difficult question how far the local authority should be entrusted with discretionary power free from central control and superintendence. Valid

[1] The German *Wirkungskreis*.

arguments can be adduced on either side in the controversy. Mill puts the case for central control under two heads:—

1. The local representative bodies and their officers are almost certain to be of a much lower grade of intelligence and knowledge than Parliament and the national executive.[1]

2. Local officials are watched by, and accountable to, an inferior public opinion. "The public, under whose eyes they act and by whom they are criticised," writes Mill in an almost declamatory sentence, "is both more limited in extent and generally far less enlightened than that which surrounds and admonishes the highest authorities at the capital." It may be doubted whether an impartial comparison to-day between the criticism of the national press upon departments of government and that of the local press upon the work of local officers would be so favourable to the former.

Thus far the advantage of Mill's argument is on the side of central management; "but when we look more closely these motives of preference are balanced by others fully as substantial." The local public has a greater interest and a greater quantity of knowledge. The will of the local public acts with far more force upon the local authority. "In the details of management, therefore, the local authority will generally have the advantage," though, "in comprehension of the principles even of purely local management, the superiority of the central government, when rightly constituted, ought to be prodigious." From these premises Mill draws a practical conclusion which stands out as one of the wisest maxims in the literature of political philosophy: "The authority which is most conversant with principles should be supreme over principles, while that which is most competent in details should have the details left to it. The principal business of the central authority should be to give instructions, of the local authority to apply them. Power may be localised, but knowledge to be most useful must be centralised."[2]

But although the main duty of the central department

[1] This presumption is surely overstated. It is not at all certain that government departments attract better legal, engineering, sanitary, and other advisers than a great city corporation or an important county council. There is no sentimental preference for governmental service in England such as that which exists in Germany. The salary is the decisive consideration.

[2] See Mill on *Representative Government*, chap. xv., towards the end.

should be to collect and diffuse information, that is not its whole duty. The central department should not only keep open a perpetual communication with the local bodies, informing itself by their experience and them by its own: it should also give advice freely when asked and tender it when required; it should compel publicity and "enforce obedience to every general law which the Legislature has laid down on the subject of local management." The laws themselves will define penalties and fix modes of enforcement; and Mill leaves only a certain amount of discretionary power to the central administration. "It may be requisite," he writes, "to meet extreme cases, that the power of the central authority should extend to dissolving the local representative council or dismissing the local executive; but not to making new appointments, or suspending the local institutions. Where Parliament has not interfered, neither ought any branch of the executive to interfere with authority." Mill's high estimate of the value of a central department, as an adviser and critic, as an enforcer of laws and denouncer of local misconduct, does not clash with the great object of local self-government upon which he so strongly insisted—the social and political education of the citizens. It is a poor schooling which leaves the children to grope along in ignorance. The true education is that which provides the means of making ignorance aware of itself and able to profit by knowledge. A system of local government without such an ideal department at the centre as Mill conceives, would resemble "a school in which there is no schoolmaster but only pupil teachers who have never themselves been taught."

The influence of Mill's theories.

If Mill's theory be compared with the actual organisation of local government as it stood in England after the legislation of 1871-75, its practical force and influence is easily discerned. This clear and discriminating exposition weakened resistance to central control, and led to the establishment of a department of public health with powers much stronger than would only a few years before have been tolerated by public opinion. A proposal which had failed twenty years earlier partly through the conservatism of the middle classes and the ignorance prevailing about administrative problems, partly without doubt owing to the excessive and undiscriminating

zeal of Chadwick, was successfully carried out under the auspices of Mill and his school. Bentham's idea of centralisation was interpreted, modified, and adapted to English needs by Mill, and not till it was adapted by Mill was it fully adopted by England.

But while the principle of central control over the main functions of local authorities was thus established and incorporated in the constitution, it took much longer to bring the organisation of the local bodies themselves into conformity with the representative democracy of Mill and Bentham. Parties were not yet ready to embrace the doctrine that all local authorities should be elected by popular suffrage. Nevertheless, an important step had been taken even before the codification of sanitary law. In 1870 the democratic principle was introduced into the youngest branch of English administration. Since 1833 Parliament had made annual grants to private associations for supplying education cheaply to the people. In 1839 a Special Committee of the Privy Council was established by Order in Council to distribute these grants. The Committee issued minutes to explain the conditions upon which grants would be given. The grants increased, the conditions became more strict, and after a time the schools earning grants were compelled to submit to regular inspection by the officers of the central authority. A most elaborate structure was gradually built up, and in 1860 the rules were revised, systematised, and officially published as an educational code. Thus the English nation had governmental inspection of schools and a public code of education before a single school was established at the public expense, and before any form of local organisation had been instituted for educational purposes. Here, again, organisation followed finance. As State aid preceded rate aid, so central control preceded local control. This growth of a large administrative department with rules and principles of its own creation, without any assistance from the Legislature, is the most remarkable instance of the experimental and empirical fashion in which some of the great English institutions have developed. Even after 1860 the system was merely provisional. The most obvious defect was its purely voluntary basis. There was no means of compelling

How democracy was introduced into education.

the children to go to school, or of providing sufficient accommodation; and far more than half of the children were untouched by the Code. Mr. Gladstone's first Ministry struck a decisive blow at these evils by the legislation of 1870. Forster's Act of that year [1] provided that in districts where there were no voluntary schools complying with the requirements of the Code, or the accommodation was insufficient, School Boards should be formed to supply the deficiency, and if the School Board failed to do its duty, the Education Department was authorised to dissolve the Board and appoint another in its place.[2] The duty of a School Board was to provide public elementary schools in its district, the cost of erection and maintenance to be defrayed partly from school fees, partly from Parliamentary grants, while the deficiency was to be paid out of the local rate by the rating authority in accordance with a precept served upon them by the School Board.[3] The whole of England was divided into school districts, though not into School Board districts. A school district must be either a municipal borough, the metropolis, or (outside these) one or more parishes, as the central department might determine. A School Board was only to be formed in case of deficiency. In a municipal district the Board was to be elected by the burgesses; elsewhere, and in the metropolis, by the ratepayers (both men and women).[4] Each voter had as many votes as there were candidates, and might, if he or she chose, give them all to one candidate. The number of members on a given School Board was fixed or approved by the Education Department in each case according to population, five being the smallest and fifteen the largest number, except in the metropolis. No qualification either of residence or sex was imposed on candidates. Indeed, it is difficult to see how the constitution of this new education

[1] 33 and 34 Vict. c. 75.

[2] See sections 6, 63, 66, for this remarkable power, which can only be defended on Millite principles by treating education as a national and not a local concern. It has disappeared under the Act of 1902. See vol. ii. Part V. chap. ii.

[3] If the rating authority fails to pay the amount specified in the precept the School Board (without prejudice to other remedies) may appoint an officer with all the powers of the rating authority, see 33 and 34 Vict. c. 75, sec. 56. Another remedy is by *mandamus*, cf. Gripthorpe School Board *v.* Gripthorpe Overseers, 47 J.P. 727.

[4] See secs. 29 and 30 of 33 and 34 Vict. c. 75.

body could have been made more democratic by the framers of the Act of 1870. Perhaps the cumulative vote is its most interesting feature. The contrivance was intended to safeguard religious minorities, and it has been proved by experience to be perfectly effectual,—in the opinion of many too effectual for that purpose. In 1876 an Act was passed to provide all school districts which had no School Board with a school attendance committee, to be appointed annually in boroughs by the municipal council, in other school districts by the Guardians, its duty being to enforce attendance at the voluntary schools in the same way that a School Board enforced attendance at the schools in its district.[1] Thenceforward a public elementary education has been universal, compulsory, and progressively effectual.

After the year 1875 zeal for the reformation of local government abated. The stimulus supplied by the extension of the franchise in 1867 seemed to be exhausted. Lord Beaconsfield's imperialism distracted the attention of the country from home affairs; and the Liberals on returning to power in 1880 found their hands full. The Eastern question was hardly settled before the troubles in Egypt began; and, moreover, Ireland had begun to "block the way." Nevertheless, an extension of the County Franchise could not long be delayed. The voice of the agricultural labourer was beginning to be heard. Following the example of the workmen in the towns, the peasants were banding themselves together to improve their condition. The movement had begun in Warwickshire, and rapidly spread through the country under the able guidance and inspiration of Joseph Arch, supported of course by Radicals and Trade Unionists in and out of Parliament. It was clear that Mr. Gladstone's cabinet —which contained at least one advanced Radical in the person of Mr. Chamberlain—would not refuse to legislate. Much as the Whigs and Tories detested the idea, they regarded the change as inevitable, and were not prepared to offend an elcctorate which it would soon be their business to capture. They concentrated their opposition upon the companion Bill for a redistribution of seats; but after a

After 1875.

County Franchise and the Act of 1884.

[1] 39 and 40 Vict. c. 79.

sharp conflict between the two Houses a compromise was effected, and both Bills became law—the Franchise Bill in December 1884, and the Redistribution Bill in the following summer. The provisions of the third Reform Bill may be summarised in a sentence. It broadened the borough franchise by the addition of a service vote, and extended to the counties the household suffrage already existing in boroughs. Its effect was to raise the number of Parliamentary voters on the registers of England and Wales from 2,660,000 in 1884 to 4,395,000 in 1886. In Scotland and Ireland the proportionate increase was naturally still greater. By the Redistribution of Seats Bill twelve more representatives were assigned to Scotland, which brought up the total membership of the House of Commons from 658 to 670. Some approximation was made to the principle of one vote one value, by getting rid of the smaller constituencies, and increasing the representation of the more populous. But the system of plural voting was allowed to continue; and the division of great cities into single member districts led to the resignation of Mr. Courtney, who desired as the faithful disciple of Mill not only to uphold, but to extend the system of proportional representation. The Bill therefore was a blow to the principle of minority representation, and it did not satisfy the advocates of "one man one vote." For all that it was a sweeping piece of democratic legislation, and its reception indicates the mighty change which had come over party politics.

Mr. Gladstone on the Bill of 1884.

When Mr. Gladstone introduced the Franchise Bill on 29th February 1884, he refused to discuss it in the spirit of fifty years ago, "when Lord John Russell had to state, with almost bated breath, that he expected to add in the three kingdoms half a million to the constituencies." Mr. Gladstone continued—

> It is not now a question of nicely calculated less or more. I take my stand upon the broad principle that the enfranchisement of capable citizens, be they few or be they many—and if they be many so much the better—is an addition to the strength of the State. The strength of the modern State lies in the representative system. I rejoice to think that in this happy country and this happy constitution we have other sources of strength in the respect paid to the various orders of the State, in the authority they enjoy, and in the unbroken course which has been

allowed to most of our national traditions. But still in the main it is the representative system which is the strength of the modern State in general, and of the State in this country in particular.[1]

No real protest was offered to these sentiments by the Conservative leaders. The Bill was but feebly challenged in the House of Commons;[2] and from this time the democratic character of the British constitution has been recognised by all political parties and admitted, however reluctantly, by the governing classes to be irreversible.[3] How thoroughly the Act of 1884 accorded with the national sentiment is proved by the administrative changes which followed, as they had followed previously upon the Acts of 1832 and 1867. And it is significant that of these changes, which completed the democratisation of local government, the first, the Local Government Act of 1888, was introduced by a Conservative ministry. The principle of representative democracy was henceforward an axiom of English politics. The strategies and skirmishes of parties never again went to the heart of this principle, but only to such details as the size and simplication of areas, the proper relations between various authorities, the problems of local taxation, the unification and "tenification" of the metropolis, and the like. English politics are remarkable for the narrowness of the ground which, in ordinary times, separates the two great political parties. Upon many subjects there has always been a common outlook and a substantial agreement. The front benches and most of their supporters are recruited from the wealthy or highly educated classes, and the number of working-men introduced into the House of Commons since the extension of the franchise has been very small. The House remains the greatest of English clubs, with an almost absurd monotony of manner and thought. Ireland and religion, Home Rule and Disestablishment, were the two greatest controversial problems of domestic politics left by the extension of the franchise. The General Election of 1886 which followed upon the defeat of Mr. Gladstone's first Home Rule Ministry, led to Lord Salisbury's return to

[1] The passage is quoted in the Annual Register (1884), p. 88.

[2] The third reading was carried *nem. con.* on 26th June 1884.

[3] On the Acts of 1884-85, see Renwick Seager, *The Representation of the People and Redistribution Acts*, London, 1884-85.

power; but the existence of his ministry depended upon the Liberal Unionists, a section of whom led by Mr. Chamberlain were still imbued with strong Radical traditions. And no doubt the Local Government Bill, which was introduced in March 1888, was introduced and carried through in consequence of the pressure and influence exerted by Mr. Chamberlain and his friends. Indeed, that measure, which created County Councils, is marked by a bold defiance of historical tradition, and a thoroughly democratic spirit irresistibly reminding us of the famous *Radical Programme* of 1885. *The Radical Programme*—an anonymous work with a preface by Mr. Chamberlain—expounds the main features of the Radicalism of 1885, for it comprehends in a drastic and practical fashion not only social and religious questions, but also the problems of local government. In the ninth chapter, entitled "Local Government and Ireland," we read that "the great work of the renovated Parliament of 1832 was the establishment of local government in towns," and that "the great work of the Parliament of 1868 was the extension of the sphere of local government in the business of national education." The writer proceeds—

The Radical Programme, 1885.

> The great work of the Parliament to be elected after the organic change of the constituencies in 1885 will be the crowning of the edifice of local government in some parts of the United Kingdom, and the foundation as well as the completion in others. Then and not till then shall we be able to say that the rights of citizenship exist, and are exercised, equally in all parts of Great Britain and Ireland.[1]

The existing system of local government is then examined. "No serious fault" is found with its working in the larger towns, where it had already proved an educational agency of the highest value, having elicited and nurtured great qualities which might otherwise have languished from want of opportunity, and "opened the way from parochial politics to imperial statesmanship." But even in the towns there were still imperfections of machinery; and the writer expresses his opinion in favour of the unification of the Boards of Guardians, School Boards, and Municipal Councils. Such unification would not only simplify the work and utilise energies

[1] *The Radical Programme*, London, 1885, pp. 291, 292.

unprofitably dissipated, but "the governing body itself would gain appreciably in dignity and importance." The same confusion existed "in an aggravated form" in urban districts.

> But the most grievous defects of our present system are to be found in the rural districts, where local government properly so called hardly exists at all, where a restricted franchise and an artificial method of voting are added to the evils of complicated jurisdiction and divided responsibility, and where the paramount authority—that of the Quarter Sessions—has no representative character.

The main features of the reforms suggested were as follows. Outside the municipalities the country should be divided into urban and rural districts, each with a single elective authority based upon household suffrage, and dealing with all the subjects of local administration. These "primary local bodies" would, however, be "signally incomplete," unless they were "supplemented by County Councils dealing with interests which extend beyond the boundaries of the smaller districts, and which these districts may be said to share in common with them," such as high roads, asylums, and prisons. The County Councils might be either directly elected by all the ratepayers of the county, or composed of representatives from the urban and rural district councils within the county. Finally, it is interesting to observe in the light of recent history, that Mr. Chamberlain (or his disciple) in 1885 did not approve of the establishment of a single great council for London after the pattern suggested by Sir William Harcourt, and to some extent adopted by Mr. Ritchie.[1]

The Radical Programme was whirled away by the blast of Home Rule; but when the Tories returned to power as Unionists in 1886, they soon found that the new alliance had involved concessions on both sides. It is true that in the General Elections of 1885 and 1886, Lord Salisbury had

[1] According to Sir William Harcourt's proposal, a central corporation was to be created for London with power to delegate some of its functions to local bodies. *The Radical Programme* (p. 296) objects to such an immense centralisation. "An alternative plan would be to create separate councils in each of the Parliamentary divisions with all the powers of provincial councils, and to reserve for a central body, formed by delegation from the various district councils, such work as is essentially metropolitan in its character." If the legislation of 1888 leaned to Sir W. Harcourt's plan, that of 1899 redressed the balance in favour of Mr. Chamberlain.

hinted that he was prepared for large administrative schemes, especially in Ireland.[1] But the Local Government Bill of 1888 was obviously in many respects the handiwork of Mr. Chamberlain, and indeed he frequently intervened in the debates to lend his support to the ministerial scheme. But the Bill, however imperatively its introduction may seem to have been demanded by the exigencies of the new Unionism, was much more than a party manœuvre. It was a measure conceived in a statesmanlike spirit to get rid of anomalies, and to supply wants which could not be supplied by the existing organisation. In truth, the substance of "administrative law" had so grown in bulk and variety during the past two decades, that it could not satisfactorily be dealt with by the old machinery.

Deficiencies of local government in 1888.

First, as regards the areas of local government. After the Public Health Act of 1875 every parish was comprised in either an urban, or a rural sanitary district. But this was almost the only element of order in the puzzle of conflicting and intersecting areas. Two main systems of local government stood side by side, perfectly distinct from one another, and without any organic connection of either constitution or territory. In the first place, there was the county system. The counties were governed by Quarter Sessions, and Parliament was the only superior authority; for over county administration and expenditure, neither a central department of government nor the local ratepayers exercised any control. Fifty years of legislation had very largely increased the volume of county business, which was all carried on under the traditional forms, and by the antique machinery of the County Bench. Parliament had added vastly to the work, without remodelling the constitution, of Quarter Sessions. The other main system might be termed local government proper. Its chief branches were the administration of the Poor Laws, and the administration of Public Health; Town Councils, Sanitary Boards, and Boards of Guardians were its principal authorities; but the

Confusion of areas.

[1] His Newport speech in the autumn of 1885 led the Irish to suppose that he was willing to go a long way towards meeting their demand for Home Rule.

boundaries of these Poor Law and sanitary authorities were seldom conterminous. A Poor Law Union was often composed partly of urban and partly of rural parishes, and often comprised a part or the whole of a municipality. The anomalies began with the parish. For five centuries there had been three kinds of parishes—the old ecclesiastical parish, the civil (common law) parish, and the statutory Poor Law parish. The areas of these three might or might not be coextensive, but they were all formed without reference to county frontiers; and consequently the Poor Law Unions, being mere aggregations of parishes, frequently cut the county boundaries. Out of 617 Poor Law Unions in 1882, no less than 176 included bits of two or more counties. Of these 176 unions twenty-nine lay in three counties, and four actually lay in four counties. This complexity was further complicated by the municipal boroughs. Often a borough was in more than one county. In the relations of municipal to county administration the utmost diversity existed. In some cases a borough was practically a part of the county; in others it was practically, or wholly independent of the County Bench. Nor, as we have said, did the boroughs correspond with the Poor Law Unions. In 1882 there were only eight cases in which a borough and a union coincided. It might have been supposed that the sanitary districts at any rate would have respected borough boundaries; and as a rule the municipality had been made into the urban sanitary district. But even here there were quite a large number of exceptions. Local Commissioners and Boards of all kinds had been allowed to spring up in all parts of the country, and to carve out districts at their own discretion with little reference to considerations of general convenience. If something had been done by general legislation to simplify and systematise, new anomalies and complexities had constantly been growing up under private Acts. Finally, all these areas of administration—and School Boards, Highway Boards, Burial Boards, etc., have been excepted from special enumeration—presented the most extraordinary contrasts of size and population. There were boroughs with 2000 inhabitants, and boroughs with half a million; there were parishes with 10,000 inhabitants, and parishes with less

than 50. Yorkshire was 40 times as large as Rutland, and the Union of West Derby comprised 120 times as many people as the Union of Hoo in Kent.[1]

In the interests of good government it was absolutely necessary to remedy some of these evils; for in many places the existing conditions were fatal to administrative efficiency. If local government is to be carried on by unpaid representative councils, every obstacle to the co-operation of the best men in the locality should be removed. Conflicts of jurisdiction, complexities of area, confusions of law, and multiplications of authority should be reduced to a minimum. Mr. Rathbone, an earnest and intelligent reformer, described the system of 1885 as a chaos of areas, a chaos of franchises, a chaos of authorities, and a chaos of rates. Simplification of areas and consolidation of powers were rightly regarded as the prime necessities of reform.[2]

[1] An excellent description of these diversities may be found in Rathbone and Pell, *Local Administration*, 1885; cf. also *Cobden Club Essays on Local Government and Taxation*, 1882. The average size of a county is there said (p. 13) to be 33 square miles, that of a union 10 square miles, and that of a parish 2 square miles.

[2] Rathbone and Pell, *op. cit.* p. 14. The following summary drawn from the same source gives a detailed idea of this system of disorganisation :—

(*a*) *Dates of Election for different authorities*

Town Councils	1st November.
Local Boards	First week in April.
Boards of Guardians	7th, 8th, and 9th April.
Highway Boards	25th March.
School Boards	Any time of the year.
Lighting Inspectors	,, ,,
Overseers	25th March.

(*b*) *Scale of Voting*

Town Councils	Occupiers, one vote.
Local Boards	As owners, one vote to six votes, according to rating up to £250. As occupiers the same scale. *N.B.*—Persons can vote in both capacities, and when rated up to £250 can have twelve votes.
Boards of Guardians	Owners and occupiers respectively according to the same scale as for Local Boards.
Burial Boards, Highway Boards, Lighting Inspectors, Overseers	Occupiers, one vote to six votes up to £150, as prescribed by the Vestries Act 1818.
School Boards	One vote, which is cumulative.

(*c*) *Tenure of Office*

Town Councils	Triennial; one-third retiring each year.
Local Boards	,, ,, ,,

Turning from the formal and constitutional to the material part of administrative law, we observe in the last quarter of the nineteenth century such a number and such a variety of social demands forcing themselves through Parliament upon the local authorities, that the conception of public health, even in its widest sense, is no longer capable of embracing the activities of a full-blown municipality. To mention only a few of these novel activities: baths and wash-houses, free libraries, museums, parks, gardens, and open spaces, allotments, lodging-houses for the working classes, may be acquired, erected, and maintained out of the rates. At the same time a great increase had been made in the work imposed upon, or permitted to, rural and county authorities — to prevent the adulteration of certain foods, and the pollution of rivers and streams, to preserve commons, to conserve fish and wild birds, to supervise canals, and the like. Many of these new powers and duties were conferred

Boards of Guardians	Usually annual, in some instances triennial.
Highway Boards, Lighting Inspectors, Overseers	Annual.
Burial Boards	Triennial; one-third retiring each year.
School Boards	Triennial; all retiring together.

(d) Method of Election

Town Councils	Ballot; single vote.
Local Boards	Voting papers left at the houses of voters, and collected in about three days; plural voting.
Boards of Guardians	Voting papers left at the houses of voters, and collected on the following day; plural voting.
Burial Boards, Highway Boards, Lighting Inspectors	Show of hands, and open poll if demanded; plural voting.
Overseers	As above; subject to confirmation by Justices.
School Board	Ballot; cumulative vote.

(e) Qualification of Candidates

Town Councils	For resident in borough same qualification as for elector; for non-resident £500 property, or £15 rating in undivided borough; in borough divided into wards £1000 property, or £30 rating.
Guardians	Varies from £15 to £40 rating in different unions.
Local Boards	£15 rating where the population is under 20,000, and £30 rating where the population is over 20,000. Personal property without rating is available, provided the amount be £500, or £1000 according to the population.
Burial Boards, Highway Boards, Lighting Inspectors, Overseers	Ratepayers.
School Boards	No qualification.

upon rural as well as urban authorities. An important commission upon technical education led to Parliament conferring this work upon both counties and boroughs. But these laws for the improvement of the moral and material conditions of society, and especially of the lower ranks of society, could not have been effectual if the local authorities entrusted with their administration had remained unsympathetic or antagonistic; for the legislation was largely permissive, and there was no central bureau of officials to force the Acts into operation. Town councils, however, and especially the councils of the large towns, had already shown such vigour and enterprise in the use of their new powers, and had conferred such advantages upon their constituents, that the feeling in favour of representative democracy had become widespread and irresistible. Municipal achievements were an example and a stimulus to a further reform of local government. "The whole tendency of the time is towards freely elected bodies," observed that staid financial organ the *Economist* on the appearance of the great Local Government Bill of 1888; and indeed by then most Conservative politicians had lost, or learned to conceal, their antagonism to democracy in local affairs. The Bill of 1888 was not, it may be remembered, the first attempt of a Conservative Ministry to deal with county government. The abortive proposal of 1868 had reappeared in 1878, and again in 1879, under the auspices of Mr. Sclater-Booth, Lord Beaconsfield's President of the Local Government Board. But these second and third Bills were only revised editions of the first. The new county authority to replace the Justices for administrative purposes was to be composed of delegates, half appointed by the County Justices, half by the Boards of Guardians within the county. The new plans were received with as little enthusiasm as their predecessor; and the apathy of the public was confirmed by the attitude of Liberal reformers like Mr. Bright, who repeatedly demanded that the reform of the counties should proceed on the same principles as the reform of the municipal boroughs. A half measure, it was thought, would only postpone the introduction of real democracy into county government, and the addition of nominated guardians was more likely to lower than to raise

Popularity of municipal government.

the standard of administrative efficiency. Such was the Liberal view as expressed by men like Bright, Stansfeld, Dilke, and Rathbone, who all joined in the demand for a county council elected by the direct vote of county ratepayers. The time had already gone by for applying the political ideals of the middle classes to problems of government. It was impossible to create a new organisation upon the principle of plural voting.[1] The lessons of experience, and the apprehension of another failure, as well as the influences brought to bear by the author of *The Radical Programme*, may account for the breadth and thoroughness of the reform of 1888.

The County Councils Act 1888.

The details of the Act, which is still in force, will be explained in the second part of this work. Here we are only concerned with the principal features of the measure and its Parliamentary career.

1. The separation of judicial from ministerial functions long ago effected in municipalities by the Act of 1835 is now extended to the counties. The Justices of the Peace retain their judicial functions; their administrative powers and duties are transferred to the County Council—a local Parliament composed of representatives directly elected by the ratepayers.

2. The county is divided into electoral districts of equal size. Every ratepayer has one vote and only one. The voting is by ballot. Many of the rules and provisions of the Municipal Act were applied to County Councils, sometimes without modification. All towns of more than 50,000 inhabitants were taken out of the counties and elevated to the status of county boroughs, whose burgesses would take no part in county elections.

3. The great problem of London government was attacked in a radical spirit, and partially, though by no means completely, solved by the erection of the metropolitan area—with the exception of the City and Corporation of London—into an administrative county.

4. The Bill regularised the system of local government by creating not only County Councils but also subordinate authorities—urban and rural district councils.

[1] Cf. Hansard, *Parliamentary Debates* (1878), vol. ccxxvii. p. 583 *sqq.*; (1879), vol. ccxliv. p. 1199 *sqq.*

5. The Bill proposed to transfer certain functions of administrative control from the central departments of government to the County Councils, and it was intended that this should be the first step in a large scheme of decentralisation.

6. At the same time, an attempt was made to deal with the licensing of public-houses. To decide whether a new license should be granted or an old one renewed was one of the functions of the Justices of the Peace, and as it seemed to be a ministerial rather than a judicial function, the Bill proposed to transfer it from the Justices to the County Council. Certain duties would remain with the Justices, but they were to act under the instructions of the County Council. The county was to be divided into licensing divisions, and there would be a licensing committee for each division with power to close licensed houses on Sunday, to refuse renewals, etc. Where renewals were refused compensation was to be given by the county, and for this purpose the County Council was to be empowered to increase the license duties by 20 per cent, so that the compensation might be paid by the trade.[1] This increase of the license duties in England and Wales by 20 per cent was calculated to raise a sum of £300,000 per annum if the power given were fully exercised.

7. The reform was bound up with a large financial scheme.[2] In the previous year Mr. Goschen, who succeeded Lord Randolph Churchill as Chancellor of the Exchequer, had doubled the grant-in-aid of main roads.[3]

[1] Compensation was to be fixed by an arbitrator in each case, but the measure of compensation was to be the difference in the value of the house with and without a license at the time of the passing of the Bill. See the lucid speech in which (on 19th March 1888) Mr. Ritchie introduced the Bill (3 Hansard ccclxxiii. pp. 1666-1673). Mr. Ritchie indicated that if the House of Commons did not welcome the licensing proposals the Government would be quite prepared to drop them, and on 12th June he announced that they would not be proceeded with.

[2] Mr. Ritchie, as we have seen, was the responsible Minister for the County Councils Bill so far as it concerned politics and administration; but the duty of explaining and carrying the financial proposals fell upon Mr. Goschen as Chancellor of the Exchequer. See 3 Hansard (1888), vol. cccxxiii. p. 1644, and 3 Hansard, vol. cccxxiv. p. 268.

[3] Lord Randolph Churchill and Mr. Gladstone severely criticised this increased dole. Mr. Goschen defended it as a temporary measure pending a complete revision of the relations between local and imperial taxation. See Budget Debates of 1887.

The objects of Mr. Goschen's proposals in 1888 were, in the first place, to simplify the relations between local and imperial taxation by discontinuing (nominally) the grants-in-aid and substituting other revenues of a local character in their place; and, in the second place, to make the County Councils Bill palatable to the agricultural interest by making the substituted revenues larger than the revenues surrendered. The first object was wholly, the second only partially attained. Mr. Goschen proposed and carried[1] the discontinuance of the following grants-in-aid:—

The financial scheme proposals of 1888.

1. *In England and Wales*—		
Disturnpiked and main roads	£250,000	
Poor Law grants	290,000	
Criminal prosecutions	145,000	
Police (London and county)	1,430,000	
Pauper lunatics	485,000	
Total		£2,600,000
2. *In Scotland*—		
Roads	£35,000	
Medical relief	20,000	
Police	155,000	
Pauper lunatics	90,000	
		300,000
3. *In Ireland—nil.*		
Total		£2,900,000

In lieu of these grants-in-aid Mr. Goschen proposed—

1. To hand over the bulk of the Excise licenses, which then yielded about £2,900,000 (now about £3,500,000), to the local authorities in England and Scotland.

2. To impose new license duties on horses, carts, and wheels.

3. To assign half the probate duty to local authorities.

The second proposal created much opposition and was withdrawn. But the first was carried and benefited local authorities to the extent of £400,000 in England, and of £18,000 in Scotland.[2] Ireland's grievances were appeased by

[1] By the Acts 51 and 52 Vict. c. 41 for England, and 52 and 53 Vict. c. 50 for Scotland.

[2] For the schedule of Excise licenses, the proceeds of which were thus assigned to local authorities in Great Britain, see Sir E. W. Hamilton's

a grant of £40,000 a year from the Consolidated Fund,[1] the Irish grants-in-aid having remained untouched.

The Excise licenses thereby assigned to local authorities continued and still continue to be levied by Parliament and collected by imperial officials, although by section 20 of the English Act (51 and 52 Vict. c. 41) the power may be transferred to the County Councils by an order in Council passed on the recommendation of the Treasury. But this power, as we are informed by Sir Edward Hamilton in the *Memorandum* already referred to, has never been exercised; and there is no corresponding provision in the Scottish Act (52 and 53 Vict. c. 50).

Mr. Goschen's third proposal was also carried. The reasons assigned for selecting the probate duty as a source from which additional relief should flow to the ratepayer were two—one that it was the only tax which fell exclusively on realised personalty, the other that it was a growing tax. The second argument is intelligible. As the burdens of the ratepayer were growing, it seemed logical that if the principle of relief from the taxpayer's pocket were accepted, the relief should be of a kind which would grow automatically with the wealth of the community. The first argument is specious, though Sir Edward Hamilton surely exaggerates when he says that "it had always been the dream of reformers of local taxation to make personalty contribute."[2] But even if this were true, the assignment of half the probate duty to the relief of rates was not a step towards the realisation of the dream. It matters not whether the sum granted be derived from the tea duty, or the beer duty, the probate duty, or any other duty, unless the sum is obtained by raising that duty. But as the probate duty remained unaltered the dream remained unrealised,[3] and the effect was precisely the same as if the grant had been paid out of the Consolidated Fund. The

The probate duty and the new grants-in-aid.

Memorandum to the Royal Commission on Local Taxation (c. 9528), Appendix I. p. 56.

[1] By 54 and 55 Vict. c. 48, sec. 5.

[2] *Memorandum*, p. 21. He refers to 3 Hansard, vol. cccxxiv. pp. 735, 745, etc., in support of this proposition.

[3] Nevertheless, this device was revived in the Agricultural Rates Act of 1896.

probate duty yielded in 1888 about five and a half millions, so that the additional relief given to the local authorities of the three kingdoms at first amounted to about two and three-quarter millions, England receiving 80 per cent, Scotland 11, and Ireland 9; these being the respective proportions in which they were then believed to contribute to the public revenue. It is in connection with the allocation of this new grant, however, that Mr. Goschen's financial scheme deserves particular consideration. Hitherto Sir Robert Peel's principle that imperial grants to local authorities should be "ear-marked" for specific purposes, and should depend upon the efficiency of the services rendered, had been tolerably well observed. In 1888, however, a new and alarming precedent was created. So far as Scotland and Ireland were concerned, the probate duty grants were allocated by Parliament for specific purposes—

> But in England and Wales there was no such specific allocation of the grant. It was to go in relief of rates generally. The only question decided by Parliament was how the grant should be distributed among the various local authorities. Three methods of distribution at first presented themselves. The choice seemed to lie between population, rateable value, and indoor pauperism; and the Government originally selected indoor pauperism as affording the best basis for providing that relief should be given where it was most required. At a later stage, however, in order to ease the passage of the Bill, that basis was discarded; and it was determined that the English share of the probate duty should be distributed between counties in proportion to existing grants-in-aid, notwithstanding that, as such grants fluctuated from year to year, they constituted a basis liable to become at any time obsolete and inequitable.[1]

We may now return from the financial scheme to the Local Government Bill itself. The new measure astonished the Radicals as much as it dismayed a handful of old-fashioned Tories and Whigs. But Whigs on both sides of the House were bound by the approval of their party, and no Tory ventured to dispute the ministerial plans; so the Bill was read a second time without a division being challenged.[2] But it was closely criticised and severely handled in Committee. In fact, the Committee stage occupied twenty-two night sittings. The divisions and

Passage of the Bill through Parliament.

[1] Sir Edward Hamilton's *Memorandum*, p. 21.

[2] See Hansard, 20th April 1888.

debates were almost devoid of a party character. The licensing provisions, the exclusion of towns of more than 50,000 inhabitants, and the clauses for transferring the control of police to a joint committee of Justices and County Councillors, were hotly and powerfully opposed, but they found friends and enemies on both sides of the House. The proposals dealing with District Councils were dropped before the Committee stage was reached, partly in order to lighten the Bill and enable it to be passed before the end of the session, partly because these proposals for reorganising the lower grades of rural government seemed to be premature, as they would certainly have been prejudicial to the revival of parochial self-government. Similarly the provisions for decentralisation, which were intended to relieve Parliament and the Local Government Board of many local duties and responsibilities, were whittled away, and in the end very little was left of the grand scheme of devolution.[1]

Nor has the Local Government Board shown any inclination to make use of such powers of devolution as the Act confers. The transference of even the smallest power to a County Council is regarded with the utmost jealousy, however overloaded the central department may be. There was a natural disposition also in the House of Commons itself not to prescribe a large dose of decentralisation until time and experience had shown the calibre of the new county authorities. The licensing clauses, as we have seen, were completely dropped. Finally, two important amendments—one to provide for a division of rates between owner and occupier, the other to substitute proportional representation for single voting in electoral districts—were defeated. On the whole, whatever may be thought of particular changes, the debates upon the Local Government Act of 1888 are a fine example of the dispassionate and purely practical fashion in which the modern House of Commons sometimes deals with a great measure of domestic reform. Especially impressive to a reader of these debates is the extraordinary knowledge of

[1] Cf. L.G.A. 1888, secs. 4, 10, and for the debates on the County Councils Bill (the Local Government Act 1888) see Hansard, *Parliamentary Debates*, 1888, vols. cccxxiii.-cccxxviii. *passim;* the Annual Register of 1888 contains a (far from satisfactory) summary.

practical government displayed by most of the speakers. One is led by this great practical achievement to the conclusion already arrived at by a review of constitutional history, that the sovereign authority of the House of Commons is unshakeably founded upon a free and vigorous system of local self-government.

The House of Lords treated the reform of county government with the respect it almost invariably pays to the Bills of a Conservative Ministry. Many of the landed nobility indeed were disgusted and dismayed at this wholesale abolition of an oligarchic system, which they regarded as one of the oldest privileges of their order. But their dissatisfaction evaporated in words, and the Bill passed through the House of Lords without difficulty, and received the royal assent on 13th August 1888.

The Act of 1888 constituted a great and far-reaching reform. The Justice of the Peace, of whom Lord Coke had said, "The whole Christian world hath not the like office, if duly executed," was now forced to drop the double rôle of judge and administrator which he had played for so many centuries. The last entrenchment of class government had been stormed; the principles of representative democracy had now been extended over the whole field of English administration. No doubt it will long be fashionable among polite publicists to regret a change which terminated the "exemplary administration" of the Justices of the Peace. We are asked to believe that a Conservative Government deliberately planned a measure contrary not only to the teachings of tradition, but also to the plain rules of utility. We are asked to believe that, merely for the sake of carrying out an abstract principle to its logical extent, a Conservative House of Commons agreed to throw overboard not only history but efficiency. In truth, it is not necessary for the student of politics to make these large drafts upon his own credulity. He will remember that it had been the immemorial custom in England to treat Justices of the Peace, at any rate on all public occasions, with a special measure of courtesy and respect. Even where undeniably large abuses had resulted from their activity, indignation

The end of magisterial administration.

The conventional J.P. and his critics.

had not been directed against the Justice of the Peace or his office. The maxim that the King can do no wrong had been applied to the crooked judgments of the local squire; and society had protected him with a halo of fictitious virtue. Besides, the moral and intellectual standards of the Justices rose with those of the community; and most of the benches had been improved by more intelligent recruits, whose fortunes had been derived not from their ancestors but by their own exertions. Most members of the House of Commons were magistrates, and were not disposed to speak ill of the county administration. But this makes it all the more certain that, whatever compliments were paid to the merits of the magisterial classes, they were relieved of administrative duties in the interests of efficiency as well as in the interests of democracy. There can be equally little doubt that the expectations of improved government have been amply fulfilled. Nor had the administration of Justices been altogether unreproached. The complimentary chorus of parochial courtiers has always been varied by sharp individual outbursts against the "great unpaid." As Fielding and Cobbett had attacked the County Justices for their harsh administration of Poor Laws and Game Laws, so in later times did the Parliamentary champions of labour denounce magistrates of the rich manufacturer type for attempting to render factory legislation nugatory, and to hamper factory inspectors in the discharge of their duty. Welshmen were particularly rejoiced by the County Councils Act, because in Wales, where five-sixths of the population were Nonconformists, Justices of the Peace still belonged almost exclusively to the established Church. Indeed, there were many Radical complaints that the County Councils Act was a very incomplete reform. It was not enough to strip the Justices of their administrative powers. The magisterial office should itself be democratised and deprived of its class character. So long as the appointment of Justices remained in the hands of the Lord Lieutenant, so long would it be closed to all merit except the merit of wealth and birth. The practical exclusion of working-men from the bench led to much evil and injustice. Offences of the poor against the rich, however trivial,—petty theft for example,—were visited with absurdly severe punishments, while the offences of the

poor against the poor, such as wife-beating or cruelty to children, were dismissed with a caution or a shilling fine.

Now that the appointment of Justices had become a matter of political patronage—so ran another of the Radical arguments—it would be better to have Justices of the Peace elected directly by the people. At the moment this idea was generally discredited as a bad copy of an American example, but it was destined to bear fruit. In the next Liberal Government, the last of Mr. Gladstone's four administrations, many workmen and people of comparatively small means were appointed magistrates. Such appointments were not of course numerous enough to change the character of the office; but they were enough to prove that a popular government can make popular appointments, and can, if it likes, without legislation of any sort, entirely alter the complexion of an institution, and give new life to the old forms by assigning democratic officers to an oligarchic office.[1] The Legislation of 1894 also took a step in the direction of making the office elective and representative.

The Local Government Reform of 1888 was compared by Mr. Gladstone to an outline map, the details of which had still to be filled in. Urgent as was the need for a simplification of local authorities, the Act had done little in that direction. Nor had the promise of decentralisation been fulfilled. On the contrary, the functions and activities of the Local Government Board had been multiplied and increased. Among other things it had been provided with machinery for simplifying the areas of local government. But the machinery was inadequate to the task of evolving order from chaos, and the lower grades of rural authority stood seriously in need of reform. Thus the course of the Liberal party was clear. To complete the reconstitution of local government in a democratic sense it was necessary to reform the subordinate rural authorities; and for some years Radical opinion had been pointing in this direction. Joseph Arch's organisation of the

Further reforms required.

[1] For expressions of opinion upon this subject in the debates of 1888, see 3 Hansard, vol. cccxxvii. p. 1642; vol. cccxxiv. pp. 1138 and 1148; vol. cccxxv. p. 51. For the activity of the Liberal Government in democratising the County Bench, cf. Report of the Annual Meeting of the National Liberal Federation, 1893, at Liverpool. On the police jurisdiction of the Justice of the Peace, cf. Arch, *op. cit.* pp. 145-173.

agricultural labourers had helped to secure them the franchise, and the Liberal party hoped still further to improve its position in the counties by giving the peasant a real interest in, and influence over, rural administration. The area of a county and even of a rural district or union was too wide, and the consequent expense too great, to permit of labourers being elected to the County Council or Board of Guardians. The parish remained, and to give it fresh life and a new democratic organisation was an article of primary importance in the Liberal programme. The National Liberal Federation had passed many resolutions in favour of a Parish Councils Bill. As long ago as 1870 a Liberal Ministry, through the instrumentality of Mr. Goschen, had made preparations for a reform of parochial and county government and a thorough revision of the system of local taxation. The first step was taken in 1870, when Mr. Goschen, as President of the Poor Law Board, moved for a select committee "to inquire and report whether it be expedient that the charges now locally imposed on the occupiers of rateable property should be divided, and what changes in the constitution of local authorities now administering rates should follow such division."[1] At the beginning of the session of 1871 a long debate upon local taxation was initiated by Sir Massey Lopes, and shortly after the debate Mr. Goschen addressed to the Treasury his report on the progressive increase of local taxation. This was in March.

The agitation for Parish Councils, 1870-94.

On 3rd April 1871 an attempt was made to crystallise the result of these investigations and reports in the form of a Rating and Local Government Bill, which was founded in part—as Sir Edward Hamilton observes[2]—on the resolutions of the Select Committee of the previous year, and was intended to simplify and reform local administration. It was accompanied by a Local Taxation Bill; and the speech in which Mr. Goschen introduced the two measures on 3rd April

Mr. Goschen's Bill of 1871.

[1] 3 Hansard (1870), vol. cxcix. p. 638. Mr. Goschen's draft report (House of Commons paper, No. 353 of 1870) is an able contribution to the problems of local finance, cf. Mr. Goschen's *Reports and Speeches on Local Taxation*, a most valuable compilation. Mr. Goschen's draft report was not accepted by his colleagues.

[2] *Memorandum to Royal Commission on Local Taxation* (1899), p. 16.

1871 will always be cited for its masterly exposition of the English rating system. Mr. Goschen first explained why he introduced two Bills—a Rating Bill and a Local Government Bill—at the same time by saying that it was "impossible to touch the question of local government without dealing with the areas of rating," while it was "equally impossible to deal with the areas of rating without disturbing the present incidence of local rates." Mr. Goschen proposed that there should be one consolidated rate, and also one consolidated audit of local funds throughout the country, with the object of putting an end to the exemption of the accounts of boroughs and highway surveyors. The next question to be decided was what area should be the unit for the collection of this consolidated rate. Mr. Goschen thus explained his reason for adopting the parish rather than the union—

Mr. Goschen's unit of local government, 1871.

> It has been said that the Poor Law Union might be utilised so as to be made the principal area for local government. An examination has proved that it is almost impossible to adopt that view, and for this reason, that out of the total number of 650 unions there are 250 at least partly situate in one county and partly in another; and what is still more serious, that, in the case of boroughs, a borough is very rarely coincident with a union. A borough is generally partly in a union and partly out of it. Again, unions do not coincide with highway districts. . . . You would have to reconstitute the whole of the unions in the country, in order to make them coincide with the boundaries of boroughs, with the boundaries of highway districts, and the boundaries of counties. On the whole, therefore, after mature consideration, it has been thought best to make the parish the general unit for local administration, the rectification of the boundaries of a parish being infinitely easier than the rectification of the boundaries of a union.

Unfortunately he was met by the difficulty that the organisation of the parish was more defective than that of any other area of local government. First, there were overseers "really appointed by the Justices, though nominated by the Vestry." Then there was the Vestry with undefined powers, with no one to convoke it, and no one to preside over it, with no stated or statutory times of meeting, with no continuous existence, and with no power to hold property.

> The House might say, Is this the organisation which you wish to make your unit in your new scheme? My answer is that we propose to

reconstitute the parish entirely. We propose that there should be in every parish what I will call "a civil head,"[1] a person who shall be responsible for the affairs of that parish. We propose that the ratepayers in every parish should annually elect from themselves a person to be called Chairman of the Parochial Board, and that he shall be associated with a certain number of other members of the Parochial Board, varying from three to twenty, according to the population of the parish, and that to this regularly constituted body, the Parochial Board, should be transferred the duties now exercised by the overseers, by the highway surveyors, by the lighting and watching inspectors and the executive duties of the Vestry, such as those which it now possesses as a sanitary authority.

The concluding words of his criticism are not easily forgotten. "The truth, sir, is that we have a chaos as regards authorities, a chaos as regards rates, and a worse chaos than all as regards areas." Where, then, was the remedy to be found for all these evils which had been brought about by piecemeal legislation and patchwork reforms? Mr. Goschen, as we have seen, proposed to answer the question by reconstituting the whole system of local government on the basis of the smallest historical unit, the parish. A Parochial Board with a chairman was to be elected by the direct vote of ratepayers in the parish. For the county he proposed to establish a county financial board, to be composed half of Justices of the Peace, half of members elected by the chairmen of parishes grouped in petty sessional divisions.[2]

The Bill never reached its second reading. It was too abstract for the practical taste of the House of Commons. It appeared at that time altogether too late to make the parish once more the real centre of local government; yet such seemed to be the tendency of the Bill. The proposal would hardly have been made except by a politician, who looked at local reform from a purely financial point of view. The opinion of the day was adverse to the parish, and far more inclined to its abolition in conformity with the Report of the Sanitary Commission of 1869 than to its resurrection under the auspices of a fiscal expert. But the failure of the Bill was

The Bill dropped.

[1] Like Bentham's Local Headman.

[2] Every county is divided for criminal purposes into petty sessional divisions which resemble in size, though unfortunately they do not coincide with, the Poor Law Unions.

due above all to the clauses which provided for a change in the incidence of local taxation in the interests of the occupier; for "those who (like Sir Massey Lopes) advocated relief of local burdens in the interests of landowners did not view with any favour Mr. Goschen's offer of relief, accompanied as it was with provisions for transferring the payment of half the rates from occupiers to owners, with only bare respect for existing contracts."[1] The landlords, who had been crying out for relief to the agricultural interest, had not been thinking of the interest of the agricultural farmer or labourer. It shocked men whose economic aim naturally was the raising of rents, and the reduction of wages, to find their agitation culminate in a proposal to bring them in to share the burden of rates with their own farmers!

So the Bills of 1871 dropped.[2] But the Liberal party did not lose sight of the question of reforming rural and parochial government. Mr. Gladstone's return to the leadership and to power in 1880 coincided with the growth of Mr. Chamberlain's influence in domestic policy. In 1882 the National Liberal Federation met at Ashton-under-Lyne, and resolved that "policy and justice alike demand that the local government of counties and rural divisions should be based upon representative principles, so that the people of such districts as well as those in towns may have constitutional control over the expenditure of the funds to which they contribute, and over the laws and regulations to which they are subject." This resolution was re-affirmed in subsequent years. In 1887 the annual meeting of the Federation was held in Nottingham, and Mr. Gladstone laid great stress upon the need for a reform in the government of parishes and rural districts.[3] Two years later, when the representatives of the party organisation met at Manchester, Mr. Gladstone declared that an organic relation should be established between Poor Law Unions and counties, that ground rents should be taxed, and above all, that a democratic reform of the lesser rural

Action of the National Liberal Federation, 1882-92.

[1] Sir E. Hamilton's *Memorandum* (c. 9528), p. 16.

[2] Mr. Goschen's speech on this Bill and on parish reform will be found at p. 189 *sqq.* of his *Reports and Speeches on Local Taxation.*

[3] Cf. Mr. Gladstone's speech in Manchester, 2nd December 1889, for the history of the parish council movement up to that time.

authorities should be inaugurated. He censured the Government for its failure to establish district councils, and added that they must "go still nearer to the door of the masses of the people." We ought, he proclaimed, "to avail ourselves of the old parochial division of the country, and to carry home to the mind of the peasants and the agricultural labourers the principles and the obligations, and to secure fully to them the benefits of local government." This sentence shows plainly enough the goal towards which the Liberal party was steering; and the leaders of the party organisation would not let the question rest. In 1891 parish councils were definitely adopted as one of the planks in the famous Newcastle programme, and it was resolved to summon a rural conference to discuss the social and administrative conditions of country districts. This conference, which assembled in London (December 1891), comprised many delegates of the small farmers and agricultural labourers, and gave those classes an opportunity to formulate their grievances, and to demand in uncompromising language an immediate reform of rural government. The delegates had no difficulty in showing that without such a reform of administrative machinery —and this meant the establishment of democratic councils in parishes and rural districts—the Allotments Act of 1887, and other legislation for improving the status and economic opportunities of the peasantry would remain inoperative.[1] Indeed, the Unionist Ministry had been rather zealous in this sort of social legislation, which only required administrative authorities with the will and the power to put it in force. The zeal of Mr. Jesse Collings induced them to introduce a Small Holdings Bill in 1892, which gave Mr. Gladstone and his followers another opportunity for calling attention to the need for parish councils. At the same time, the agricultural labourers through their unions were agitating quietly but effectively for Parochial Reform—a movement which, after the downfall of Mr. Parnell, gave a welcome impetus to Liberalism. Home Rule for Ireland was still in

[1] For the above narrative compare Proceedings of the National Liberal Federation for 1882, 1887, 1889, 1891. Also various pamphlets, issued under the auspices of the party organisation, *e.g.* Parish Councils and Reformed Vestries, 1891; Village Reforms and the Liberal Party, 1892; the Condition of the Rural Population—a Report of the Rural Reform Conference, 1891.

the forefront of the Liberal programme at the general elections of 1893, but conjoined with it were other and more popular proposals—such especially as reform of local government in rural districts.

The second Home Rule Bill, like the first, is outside the range of this narrative; but the Parish and District Councils Bill, introduced on 21st March 1893, by Sir Henry Fowler, the President of the Local Government Board in Mr. Gladstone's fourth administration, is the last of the great constructive measures which built up a democratic system of local government in England. The details of the measure in its final statutory form will be described elsewhere. Here it is only necessary to give a rough outline of the changes which it introduced.

The Parish Councils Bill, 1894.

The first principle of the Bill was to introduce local self-government into rural parishes, by giving the larger parishes parish councils elected by the universal suffrage of the rate-paying inhabitants, and by establishing in the smaller parishes parish meetings of all inhabitant ratepayers with almost the same powers and duties. At the same time the old urban and rural sanitary authorities were reconstructed as urban and rural district councils, elected by the same popular suffrage as the parish councils. Boards of Guardians were also reconstituted. The system of class voting was abolished, and henceforth the Guardians were elected by the same franchise as urban and rural district councillors. Wherever the Poor Law Union coincides with a rural district, the rural district councillors are also Guardians of the poor. Thus the passing of this Bill meant that the broad and democratic principles of the Municipal Corporations Act were at last applied and extended in full to the smallest units of local government. Another series of provisions was inserted to establish administrative relations between county, district, and parish councils.

Many administrative functions, such as the maintenance of roads, were transferred to and concentrated in the new district councils, and the way was thus cleared for the extinction of many *ad hoc* authorities, and other anomalous bodies. The Act also introduced for the first time in English history intelligible order, if not perfect harmony, into the

confusion and chaos of local areas. The principle established and provided for by the Act is, that the district of a local authority must fall entirely within the district of the local authority next above it in the hierarchy. A parish must not overlap a rural district, nor a rural district a county. The county councils were empowered under the Act to make orders for the purpose of rectifying boundaries in accordance with this principle, and thus a small concession was made to the advocates of administrative decentralisation, and a long step taken on the march towards simplification of areas. Finally the new statute greatly increased the efficacy and quickened the operation of the allotments and small holding Acts, and of other similar legislation which depended upon the existence of a sympathetic authority. No direct opposition of any weight was made, even on the Conservative side of the House, against the introduction of a democratic franchise to replace the class system of the subordinate authorities. But loud voices were raised in protest against a danger which was supposed to lurk in certain clauses of the Bill, namely, that local expenditure might come to be controlled by a majority of persons who would contribute but little to the local revenues, and who (owing to the device of compounding rates) might suppose that they contributed nothing at all. The idea of taxing or rating property out of existence had been put forward by a distinguished socialist, Mr. Sidney Webb, and a good deal of uneasiness was felt with regard to the influence of the doctrine of confiscation by taxation upon the Radical wing of the Liberal party. But these alarms were baseless, at least so far as the Bill in question was concerned; for it was studded with cautious provisions to limit the expenditure and define the functions of parish and district councils. In Parliament the Bill was debated for an unusual length of time, and many of its clauses produced lively controversy. The provisions for secularising charities, and for facilitating the acquisition of small holdings excited strong opposition in both Houses of Parliament. The House of Lords, which had thrown out the Home Rule Bill, set itself to "amend" the Parish Councils Bill, and displayed so much obstinacy and determination (encouraged of course by the smallness of Mr.

Gladstone's majority in the House of Commons) that a sharp conflict between the two Houses arose, and seemed likely to be followed by a dissolution. It is said that Mr. Gladstone favoured such a course, but was overruled by the majority of his colleagues. However that may be, the Ministry decided to accept the Bill as amended by the Lords, and Mr. Gladstone's last speech in Parliament was delivered for the purpose of announcing this decision, and at the same time emphasising in the most solemn manner the incompatibility of the two Houses, and the danger of the constitutional situation which had been created by the Lords. Thereupon the Local Government Bill passed both Houses, and received the royal assent in March 1894.[1]

This great piece of legislation practically completed the work inaugurated by the Reform Bill of 1832. The whole field of internal administration, if we except the City of London, now lay under the control of popularly elected bodies. Local government was entirely municipalised—that is to say, the principle first applied to municipal corporations had been extended to all other local bodies. But at the same time local administration throughout the length and breadth of the land had been subjected to a carefully restricted yet thoroughly practical scheme of central control. This administrative control is vested in the permanent departments of government, which are themselves subordinate to Ministers responsible to Parliament; but the Acts of 1888 and 1894 mark an interesting and important development, in that they extend the supervisory and administrative relations into the lower grades of the newly constituted hierarchy, and devolve upon a popular county council some of the duties which in a bureaucratic system would fall upon permanent officials. Finally, the territorial disorganisation, with its historical patchwork of areas and conflict of jurisdictions, has been so vastly improved that order and comparative simplicity may be said to have been introduced.

Local Government in England after 1894.

Yet, with all these far reaching processes, which have

[1] Hansard's *Parliamentary Debates for the Session* 1893-94, and especially Sir Henry Fowler's speech of 21st March 1893; also the Act itself, 56 and 57 Vict. c. 73, and *Fabian Tracts*, 56, 62.

reformed and transformed the internal administration of England, its constitutional law has stood intact and inviolate. To all essential purposes the last word upon every constitutional and legal difficulty arising out of government must be said solely by the ordinary courts of the country. *Le droit administratif* is to-day, as it was in the time of Coke, a conception foreign to English jurisprudence, unrecognised by the English constitution, and unknown to the English public. English laws of administration have exhibited during the nineteenth century an extraordinary growth both in volume and strength, but they remain as before simply a component part of the general law of the land, and are expounded and interpreted by the ordinary courts according to the same rules and principles as other statutes. A new structure has been raised to replace the old system of administration, but it has been raised upon the old foundations of a unified and sovereign law. A full and unrestricted acceptance of the principle of representative democracy has given new life and form to local government. The whole of local administration must be carried out by the constitutionally elected representatives of the inhabitants of each local circumscription. But the new principle of representative democracy has not merely left intact—it has given fresh meaning and value to, that grand old doctrine of the sovereignty of law upon which the English polity is founded.

Several problems of home government have, it is true, been left in suspense. The Poor Laws are in dire need of consolidation and amendment. Primary education is still divided between responsible and irresponsible managers. No satisfactory system of secondary education has been set up. Now that School Boards have been abolished by the Education Act of 1902, the question arises whether any *ad hoc* authorities should be allowed to continue, and whether it would not be better that the poor should be relieved under the direction of the County, the Town and the District Councils.

Again many problems of local taxation, and particularly the relations between rates and taxes, require to be handled in a comprehensive and statesmanlike spirit. The last five years of the nineteenth century were in this, as in some other respects, not merely years of inaction, but

years of reaction and retrogression. The bad example set by Mr. Goschen was extended. Grants in aid of rates amounting to more than two millions of money were given in relief of agricultural ratepayers. Tithe owners were relieved of half their local burdens; and voluntary schools, whose boards are nominated, received further assistance from the Imperial Exchequer. In none of these cases was any service received or any public control[1] obtained in return.

But from the standpoint of organisation the tasks and problems of the future are of secondary importance. The grand principle of representative democracy has been fully applied to local government, and securely established by the series of measures which culminated in the Act of 1894. In England, at least, De Tocqueville's prophecy of the triumph of democratic ideas was substantially fulfilled before the close of the nineteenth century.

Parliament, which controls by popular mandate the destiny of the nation and the empire, is itself largely guided by a free press, free combinations, free meetings, and other manifestations which mark the current and direction of public opinion; and thus the course of national policy and the temper of national administration is decided, or at least influenced, by all classes in the community. The stability of the State is secured by the participation of all its citizens in the common life. As with the national Parliament, so with the local councils. They are elected by the people of the locality; they work under the censorship of local opinion. These little parliaments of the county, the town, and the village, like the great Parliament of the nation, employ paid officers to execute their commands. But these paid executives have no authority and (theoretically) no discretionary power of their own. At last class rule, in so far as it rested on law and constitution, has been totally abolished; and England has created for herself "Self Government" in the true sense of the word, and not in the sense which Gneist has made popular in German literature and politics. She has secured Self Government—that is to say, the right of her people to

[1] Unless we regard the grant to Irish landlords in 1898 as the price of their acquiescence in the establishment of a democratic system of local government in Ireland.

legislate, to deliberate, and to administer through councils or parliaments elected on the basis of popular suffrage, with a civil service of municipal and imperial officials entirely subordinated to the popular will in law and in fact. The one great (and wholesome) limitation upon the sovereignty of the people, apart from the anomaly of a hereditary chamber, lies in the existence of a pure and independent judiciary which makes it impossible for any person or combination of persons, or even for the Government itself to break the law with impunity. The authorities which have power to make laws and bye-laws have power to change but not to infringe them The people is law-abiding as well as law-making. And this is the root of the incomparable strength and health of the English Body Politic.

BOOK II

THE LOCAL AUTHORITIES IN THE ENGLISH SYSTEM OF LOCAL GOVERNMENT

PART I

CONSTITUTION AND GOVERNMENT OF MUNICIPAL BOROUGHS

PART I

CHAPTER I

THE LEGAL POWERS OF ENGLISH MUNICIPALITIES, THEIR SOURCES AND THEIR EXTENT [1]

OUR next task is to describe the various formations of local government in England, under the laws now in force,

[1] *Note.—Literature*—Almost all the literature of the law relating to municipal corporations is of a severely practical character. In this as in other branches of English law, the object of writers has been to compile a text-book, containing all the statutes and decisions bearing on the subject, in order to assist the practising barrister. There is one treatise, however (the last edition is half a century old), namely, Grant's *Law of Corporations*, which treats the subject broadly and scientifically, cf. the edition of 1850, pp. 340-514. Arnold's *Law of Municipal Corporations* (1894) is the latest work. In *The English Municipal Code*, London, 1888, Somers Vine supplies a commentary on the Municipal Corporations Act of 1882. *The English Municipalities, their Growth and Development*, by the same author, is a most valuable collection of historical and statistical materials; unfortunately it has not been brought up to date. The gap is filled to some extent by annual publications such as the *Municipal Year-Book*, and the more accurate Local Taxation Returns of the Local Government Board. Certain general books on English local government should be mentioned. But their account of town government is neither copious nor detailed, and is usually rather a historical sketch of the development than a picture of the present structure and working of municipalities. Cf. Gneist, "Self-Government," *Kommunalverfassung und Verfassungsgerichte in England*, 3rd ed., Berlin, 1871, pp. 580-643; Vauthier, *Le Gouvernement local de l'Angleterre*, Paris, 1895, chap. iv.; Arminjon, *Administration locale en Angleterre*, Paris, 1895, p. 10 *sqq.*; Chalmers, *Local Government*, London, 1883, p. 61 *sqq.*; Blake Odgers, *Local Government*, London, 1899, p. 69 *sqq.*; Wright and Hobhouse, *Local Government and Taxation in England and Wales*, London, 1894, p. 20 *sqq.* (a very trustworthy legal summary). Shaw's *Municipal Government in Great Britain*, New York, 1895, is an interesting and popular, if not a penetrating or critical account of government in modern English towns. Hugo's *Städteverwaltung und Municipal Socialismus in England* (1897) treats the eco-

and the various modes in which the different local authorities do their work. This is the horizontal or sectional as distinguished from the vertical or historical view of our subject. Instead of tracing the history of the whole, we investigate the constitution and operation of each part separately. In this analysis history is still allowed to give precedence to the municipalities. Indeed, the historical order is far the most convenient and instructive, because, as we have already said, the municipal constitutions erected in 1835 have served as a model to the architects of the remaining portions of the structure.

The Municipal Corporations Acts 1835 and 1882.

Before 1835 every municipality in England had its own peculiar fount of rights and privileges. The great object of the Municipal Corporations Act was to introduce uniformity, and give one cast of constitution to all municipal towns. At a single blow all the old charters and grants were annulled, in so far at least as they conflicted with the new municipal code. A long series of amending and supplementary enactments followed, and these again were consolidated and superseded by the Act of 1882, a true *codex municipalis*. Since that time some small amendments have been made; but the Act of 1882 remains the principal source of the general constitutional law which binds English municipalities, and distinguishes them in some respects from other forms of local organisation.

The Municipal Corporations (Consolidation) Act 1882 [1]—

nomics of municipal government with much learning. Reports of Royal Commissions, however, constitute our most important sources of information, apart from statutes, orders, and bye-laws. The First Report of the Royal Commission 1835 is of almost purely historical interest, like the Boundaries Commission of 1838. But the Royal Commission of 1894 "appointed to consider the proper conditions under which the amalgamation of the City and the County of London can be effected" (c. 7493) throws much light upon current problems of municipal organisation, and the minutes of evidence which were issued along with the report have been fully utilised. The annual reports of the Local Government Board are quarries of statistical information about municipal finance. And the reports of the late Royal Commission on Local Taxation deserve particular mention. Much valuable material has also been drawn from the pages of the *Municipal Journal* (London, 1897-99), and other similar publications.

[1] 45 and 46 Vict. c. 50. Of later enactments the most important is the Municipal Elections (Corrupt and Illegal Practices) Act, 47 and 48 Vict. c. 70.

to give the statute its full title—is therefore to be understood as a general code whose provisions apply with full force to every municipality, extinguishing old irregularities and variations, and at the same time preventing new ones from arising in the future. But while the Act does definitely fix and conclude the constitution of a municipality, it does not in any way limit or circumscribe the sphere of municipal operations. Indeed it merely provides the indispensable minimum of work—the work that must be done by every borough council in performing the functions which flow from the very nature of its corporate existence. The work in fact imposed by the Municipal Corporations Act is just so much and no more than the Legislature in 1835 thought indispensable to justify the creation of a municipality, or the continuance of a municipality previously existing. Since 1835 the scope of municipal work has widened enormously. A vast number of powers, some obligatory and some permissive, have been conferred upon borough councils by statutes which are neither included nor referred to in the Municipal Corporations Act of 1882. The Town Council is not the Urban Sanitary Authority by virtue of the Municipal Corporations Act, from which indeed the conception of public health is practically excluded. Yet it is under this conception of public health, as we have seen, that the more modern developments of "administrative law" in England have mostly occurred. A whole series of statutes must therefore be added to the Municipal Corporations Act, if we are to have anything like a complete list of the sources from which a municipality draws its manifold powers.[1]

Some of the main statutes coming under this head will be found in a footnote; but a general idea of the functions,

[1] Some of the more important of the general statutes which enlarge the scope of municipal work are: The Tramways Act 1870; the Public Health Act of 1875; the Housing of Working Classes Act 1890; the Public Health Amendment Act 1890; the Electric Lighting Acts 1882-99; the Sale of Food and Drugs Acts 1875-99; the Light Railways Act 1897; and the Education Act 1902. A complete collection of the Public Health Laws in force in 1899 and 1900 respectively will be found in Glen, *The Law Relative to Public Health and Local Government*, 12th edition, London, 1899, and Macmorran, *Law of Public Health*, 1900.

obligatory and permissive, which attach to a Town Council as Urban Sanitary Authority, may be obtained by turning over the pages of the Public Health Act of 1875. The duties and activities of a town corporation under that Act are infinitely more important than those which are imposed by the Act of 1882, for whereas the latter is in the main constitutional law, the former is in the main material law. If we pass from the question where to find the sanitary code now in force, to that of whence and how it came into being, we are again confronted with the influence of local upon general legislation. The English Legislature had always been loath to provide general schemes to meet local and particular requirements. The growth of local needs in the eighteenth century had been catered for almost entirely by private Bill legislation;[1] and the course of legislation upon municipal affairs from the time of the passing of the Reform Bill illustrates the merits, as it counteracted the defects, of this national tendency or prejudice. On the one hand the volume of private legislation has steadily grown. On the other hand many general statutes have themselves been suggested by successful examples of local legislation. They were often empirical, and founded in many cases upon provisions in local statutes which had proved workable and beneficial in a particular town or towns. The marked similarity in some of the Bills which came before Parliamentary Committees led Parliament to formulate model provisions (in the Clauses Acts), which could be adapted to the convenience and advantage of all parties. The Clauses Acts found general favour, and one of the features of the Public Health legislation (beginning in 1848) was to make obligatory upon all sanitary authorites certain portions of these permissive and quasi-local Clauses Acts. The Clauses Acts served in fact as a half-way house between local and general statutes. By their aid, small, permissive, and successful experiments were developed into large and compulsory operations. Many towns are proud of having

The English sanitary code.

Clauses Acts.

[1] Cf. Sir C. P. Ilbert, *Legislative Forms and Methods*, pp. 28-33, 92. For a general view of the benefits conferred upon municipalities by private Bill legislation, see Clifford's *History of Private Bill Legislation*, London, 1887.

served as pioneers of public health by boldly asking for, and obtaining through private Bills, powers which were afterwards conferred generally by Parliament upon all urban authorities. On the other hand there is so much diversity in the needs and ambitions of towns, that Parliament can never expect (nor will it desire) to get rid of the need for private Bill legislation. Almost every municipality has a number of small local Acts to supplement the general statutes from which it derives its existence and its ordinary duties. In some of the larger county boroughs local statutes have been codified. But these particular laws have little real significance for the constitution of a town; they affect chiefly the scope of the council's operations.[1] Thus any one who wants to know the powers and duties of any given town must consider the local as well as the general laws by which it is bound. He must also discover what Adoptive Acts (if any) the town has taken over. Adoptive Acts constitute the permissive legislation which plays so important a part in English local government. They are concessions to a repugnance long felt against legislating for a locality, except at the express wish of the inhabitants. Where there is some doubt as to the applicability of a general law to all places, the Legislature prefers to make its adoption permissive. If the Clauses Acts are a half-way house, the Adoptive Acts are a three-quarter way house between local and general legislation. All that is necessary is for the Town Council to adopt such an Act by formal resolution. The Adoptive Act thereupon comes into force without the need for any of the elaborate and costly proceedings which are involved in the promotion of a private Bill. In some towns all the Adoptive Acts are in force, in others only one or two; and it will be found on closely comparing towns that considerable differences in the number of committees and of the perma-

Adoptive Acts.

[1] In 1846 Liverpool was governed mainly under local Acts, which were then unified in a Consolidation Act (Clifford, *op. cit.* vol. ii. p. 232). Birmingham consolidated its private Acts in 1882. Leeds, however, is encumbered with a local statute book of 45 distinct and unconsolidated private Acts; and many other towns are similarly embarrassed. The result is that plaintiffs and prosecutors are often puzzled to find or select the section under which they shall proceed.

nent staff can be accounted for by differences in the Acts adopted.[1]

To sum up the result of our analysis in a sentence. The constitutions of English municipalities all depend upon a single compulsory code, but their functions and the spheres of their activity are widely and variously extended by general statutes, some of an obligatory, some of a permissive character, and also by local or private Acts.

So far the meaning of municipal corporations has been considered, and the powers conferred upon them by the Municipal Corporation Act and otherwise. It remains to ask on what communities these powers are conferred. It is a question to which no complete, definite, and scientific answer can be given unless a simple enumeration of the places governed by the Municipal Corporations Act can be called a scientific as well as a complete and definite answer. The English municipality is not a type or form of government cast in a philosophic mould, and embracing some definite community of a particular size or quality. The category of municipalities is a historical category, consisting in the first place of all the municipalities included in the Act of 1835 (178 in all), and in the second place of all towns upon which a municipal Charter (under that Act, or the Consolidation Act of 1882) has been bestowed since 1835. The number of these additions is already 135, so that the total number of municipal boroughs in England and Wales is 313.[2] The

What communities are municipal.

[1] Some of the chief Adoptive Acts are: The Baths and Wash-houses Acts 1846-78; the Public Libraries (Consolidation) Act 1892; the Museums and Gymnasiums Act 1891; the Public Health Amendment Act 1890 (Parts II.-V.); Housing of the Working Classes Act 1890 (Part III.); the Infectious Disease (Notification) Act 1889; the Private Street Works Act 1892. It should be added that many Acts originally adoptive have since been made compulsory, such as the County Police Legislation of 1856.

[2] Including Douglas in the Isle of Man. Cf. *Municipal Year-Book*, 1901, p. 28. Wright and Hobhouse, p. 21. The numerical growth of municipal boroughs was only slow in the four decades succeeding the Reform of 1835. The census of 1871 described 938 places (all with more than 2000 inhabitants) as towns; of these 224 possessed municipal charters, only 46 charters having been granted since 1835. It might have been supposed that the improved government given to urban districts in the seventies would have retarded the extension of the municipal constitution. But this was much more than balanced by the New Charters Act, 1877. Until then the cost of applying for a

area under the Municipal Corporations Act may grow either by the extension of the boundary of a borough, or by the creation of a municipality. For the latter a royal Charter is necessary. The grant of this charter is a prerogative of the Crown, and the grant purports to be made by the king on the petition of the inhabitant householders of a town or district, by the advice of his Privy Council. The wording of the charter might suggest that the grant, if not the personal act of the sovereign, was at least the act of an irresponsible executive. But as the English constitution now stands the Privy Council is only a venerable and ancient form, a disguised edition of the Cabinet. The Cabinet is responsible for such a grant, and can be called to account by Parliament. But this is not the only consideration which leads us to regard Parliament as the decisive factor in the grant of a Charter. It has been held by the Court of Queen's Bench in a leading case,[1] that, although the grant of a charter of municipal incorporation is still an exercise of the common law prerogative of the Crown, yet section 210 of the Municipal Corporations Act prevents the Crown from granting by Charter the powers conferred by the Municipal Corporations

Creation of a municipality by Charter.

new Charter fell, in case it were refused, upon the individual promoters and petitioners, and could not be laid upon the rates of the district. This risk was lessened though not absolutely removed by section 7 of the New Charters Act 1877 which ran as follows: "If the Committee of Council are satisfied that a local authority or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order such costs to be paid, and these costs shall be paid accordingly." This section was reproduced in practically identical language in the Municipal Corporations Act 1882, sec. 214 (4). In 1876 a commission was appointed to inquire into the Municipal Corporations left unreformed and untouched by the Act of 1835, and in consequence of the Commissioners' report twenty places "with a corporation or reputed corporation," as well as four not recommended by them, received charters by virtue of the Municipal Corporations Act 1883, 46 and 47 Vict. c. 8, which placed them under the Act of 1882. See First Schedule to the Act of 1882, and Somers Vine, *English Municipalities, their Growth and Development*, p. 254. In 1902 a return was issued by the Home Office giving particulars of the charters of incorporation granted and refused since 1888. From this return it appears that 55 municipal charters were applied for between 1888 and 1902, of which 35 were granted and 20 refused.

[1] Rutter *v.* Chapman, 8 M. and W. I.

Act, save in accordance with the procedure provided by that Act. The grant of a municipal charter is therefore governed by Act of Parliament; and if we turn to Part XI. of the Municipal Corporations Act 1882 (sec. 210-218), we find that elaborate rules have been provided by Parliament, which must be observed by the Privy Council and the Crown if the grant is to be a valid one. Under 1 Vict. c. 78, sec. 49, the power to make a grant "attaches" only on the presentation of a petition representing the wishes of a majority of the inhabitant householders. If the validity of the charter is challenged, the question whether a petition does represent the majority or not is a question of fact for the jury. Under the Act of 1882, and so far as municipal incorporation is concerned, the two broad conditions indispensable to the making of a new municipal borough by the Crown are—(*a*) a petition of inhabitant householders, and (*b*) the advice of the Privy Council. The presentation of the petition must be notified to the County Council of the area affected, and also to the Local Government Board (Local Government Act 1888, sec. 56). When the petition is referred to the Committee of Privy Council, the Secretary of State and the Local Government Board must be consulted (Municipal Corporations Act, sec. 214). Then the Committee may settle a scheme "for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities" of local authorities, and local officers who would be affected by the grant of the charter.[1] The scheme when settled by the Committee of Council must be published in the *London Gazette;* and opposition to the scheme must be formulated by petition within a month of publication. The parties entitled to oppose the scheme are either local authorities affected, or not less than one-twentieth of the owners or ratepayers of the borough. Here Parliament has again reserved power to itself; for if such a petition has been received by the Committee of Council, and is not withdrawn, "the scheme shall require the confirmation of

[1] The "scheme" of section 214 must be carefully distinguished from the "charter" of section 213. The charter fixes (*a*) the number of councillors and wards if any, (*b*) makes temporary arrangements and modifications of the Municipal Corporations Act for setting the new authority on its legs. The "scheme" readjusts the local authorities and areas, and financial interests affected by the creation of the new municipality.

Parliament."[1] Otherwise, at the expiration of the month the Committee of Council may submit the scheme for confirmation either to the King in Council, or to Parliament, and in the former case the scheme will be confirmed by Order in Council. The new borough then comes under the operation of the Municipal Corporations Act, with such local or temporary additions and modifications as are provided in the charter and the scheme.

[1] The Municipal Corporations Act 1882, sec. 213 (4).

CHAPTER II

MUNICIPAL BOROUGHS—THEIR TERRITORIAL BASIS [1]

I. *The Town; its Extent and Extension*

THE territory governed by a town council is decided by historical development and private legislation rather than by general rules or general Acts of Parliament. Indeed since the first of the Municipal Corporation Acts (1835) Parliament has almost entirely refrained from public legislation with regard to municipal boundaries. The Commissioners appointed to inquire into municipal corporations included in their famous report of 1835 an important series of paragraphs upon "the extent of local jurisdiction."

Municipal boundaries and territorial anomalies in 1835.

The boundaries of the jurisdiction exercised by the several municipal corporations in England and Wales are generally known with tolerable accuracy. Occasionally doubts and disputes occur with regard to small parcels, frequently arising from a confusion between corporate and parochial boundaries. The corporations in some places make periodical perambulations of a district not conterminous with that in which they claim authority; occasionally, as at Lancaster, this is connected with a vague tradition of former authority or property; sometimes no explanation can be given, unless it resolves itself into a case of confusion of the acts of the corporation with those of a parochial vestry or leet jury. In those corporations which have abandoned or lost their power of municipal government much difficulty often occurs in ascertaining the limits of the municipal privileges, which in such cases are usually of little value.

In some cases, as at Grantham and Brecon, the corporate boundary is not continuous, but includes outlying parcels of ground. Several remarkable instances of this occur in the Cinque Ports. One of the most striking is at Hastings, where the corporate magistrates have authority, among other places, over two detached precincts distant from Hastings

[1] This chapter has been added by the translator.

forty and fifty miles respectively. The town of Ramsgate is subject to the jurisdiction of the corporation of Sandwich, as is also the corporate town of Deal, which adjoins Sandwich.

In most important towns the suburbs have extended themselves far beyond the limits of the corporate authority. The population of the city and county of Bristol is 59,000; the suburbs beyond the city contain an additional population of 45,000. The population of the city of Rochester is only 9891; the district immediately adjoining it, including the town of Chatham, comprises nearly 22,000 persons. The city of Carlisle contains 8356 persons; the suburbs are of as great extent, and contain a population of 10,713. At Hull the municipal borough contains 15,996; the county of the town including the borough, 32,958; the suburbs, which are beyond the jurisdiction of the borough magistrates, contain 20,000 more.

Frequently there are precincts locally situated within the limits of the corporate authority, but exempted from its jurisdiction. Such are found at York, Lincoln, Norwich, Winchester, and Chichester. These have usually originated in ecclesiastical privileges, or have been the site of the castle of the lord of the borough. In the city of Canterbury there are not less than fifteen such precincts, though some are in dispute between the counties of Kent and Canterbury.

By the Act 2 William IV., c. 45 (the Reform Act, 1832), the right of voting for members of Parliament was extended to the inhabitants of all such precincts, but that Act did not affect their exemption from the corporate jurisdiction. Many corporations exercise authority over the adjacent waters to a considerable distance beyond their land boundary. The liberties and jurisdiction of Rochester, on the Medway, extend to Sheerness, a distance of twenty miles. Bristol has jurisdiction as far as the Holmes in the Bristol Channel, twenty-five miles from the town. Newcastle-upon-Tyne has jurisdiction on ten miles of the river below the town and seven above it. The jurisdiction of Ipswich extends over a considerable part of the harbour of Harwich.[1]

Many of these territorial anomalies obviously required amendment. But the Whig Government, most wisely determining not to embarrass and complicate their reform of municipal corporations with any elaborate scheme of territorial reorganisation,[2] appointed a Royal Commission to make a separate inquiry "into the present metes and bounds of certain cities, boroughs, cinque ports, and other municipal corporations in England and Wales." The appointment of the new Commission was made from "a gracious regard for the designs to improve the internal government of our cities and towns corporate," and "with a view to such alterations (of metes and bounds) as may here-

The Boundaries Commission, 1835-37.

[1] Report of 1835, pp. 30, 31.

[2] Cf. section 7 of the Municipal Corporations Act of 1835.

after be deemed expedient." The Commissioners were not, however, asked to conduct an inquiry into the boundaries of all municipal corporations, but only into a certain number, about 170, which were indicated by the Home Secretary. They had also to report whether it was "expedient that any of the said cities, boroughs, cinque ports, and corporations shall be divided into wards," and if so what should be the number and extent of such wards.

The Report of the Boundary Commissioners was issued in 1837, and the general or introductory observations and suggestions which cover the first eleven pages of the first volume are interesting as the first broad and philosophic attempt to deal with municipal geography, and especially with the difficult and constantly recurring problems of borough extension, which still perplex and baffle parliamentary committees in spite of all the experience and precedents accumulated in the period that has intervened.

The Commissioners began by dividing the boroughs into two classes—a first class consisting of smaller boroughs which did not require to be divided into wards, and a second class of larger boroughs in which such a division was recommended. The four principal Commissioners[1] divided England and Wales into six circuits and assigned two circuit Commissioners to each. The general report is signed by the principal Commissioners only, and the particular reports upon each town by the two circuit Commissioners who visited it. The principles on which the chief Commissioners acted are best explained by the letter of instructions issued to the circuit Commissioners:

WESTMINSTER,
21 GREAT GEORGE STREET,
6th July 1835.

Sir—You are directed to fix the boundaries of the cities or boroughs in the ———— district, marked on the accompanying map, so as to include all houses in each city or borough town and its suburbs.

In the case of a city or borough having a suburb near, but not immediately contiguous to it, you will use your own discretion in recommending to the Board Commissioners whether such suburb shall be included within the municipal boundaries; regard being had,

1. To the nature of the population of each suburb, whether commercial, manufacturing, or agricultural.

[1] Charles Shaw Lefevre, George James Pennington, John E. D. Bethune, and Edward Rushton.

2. To the extent and nature of the ground separating such suburb from the town.

In no instance will it be advisable to include a suburb within the municipal boundaries without including also the ground which divides it from the town.

You will adhere to the old boundaries where practicable; but where they are too extensive or too limited you will lay down other lines adapted to the present circumstances of the town, observing that the inhabitants included within the boundaries may be subject to the payment of the town rates for police and other purposes.

When it shall be necessary to recommend an alteration of the present boundaries, you will pay attention to the selection of parish bounds or such other local limits as may have been long established.

In developing these instructions the Commissioners lay down certain general principles, which are still applied by Parliamentary Committees to cases of borough extension. Two of these principles may be reproduced in the language of the Commissioners:—"To relieve from all municipal burdens those who cannot participate in all municipal advantages, and to include within the limits of each borough a population having a community of interest." The proposal to exclude large agricultural districts, which contributed to the rates of a small town without obtaining any corresponding advantages, naturally aroused opposition among townsmen. The Commissioners persisted in their proposals, with the result that no general legislation followed, as the small municipal towns were still very powerful in the election of members to Parliament.

Principles formulated in the Report.

With regard to community of interest—a topic upon which those who practice at the Parliamentary bar and appear at local inquiries are often called upon to discourse—the Commissioners added:—

We also thought it important in settling the limits of each borough to include within it only a town population having the same views and the same interests; whereas, wherever a rural district is part of a borough, dissensions easily arise from a real or even from a supposed diversity of interests, which are not unlikely to increase with the increasing wealth of the borough. In a rich town large and expensive improvements may fairly be made for the comfort and convenience of the townspeople. To these the agricultural portion of the borough, who generally form the minority, will be obliged to contribute without sharing in the advantages of them; or, in case they should be numerous enough to form the majority, they may oppose serious obstacles to the improvement of the

town. As an instance we refer to the report upon Saffron Walden, in which it appears that a proposal to light the town was defeated by the agricultural ratepayers.

Financial difficulties.

The great standing obstacles then as now to an alteration of borough boundaries arose from the difficulty of financial adjustment. A suburb, which shares all or most of the advantages of the public baths, parks, tram service, water, etc., provided by an adjacent municipality, has often no desire to be formally included when the privilege of electing part of the Council involves the burden of higher rates. It may be doubted whether Parliamentary Committees and the Courts of Law (before which such questions occasionally come owing to the need for interpreting doubtful sections in the Local Government Act of 1888 and similar enactments) have even yet fully grasped and formulated the true principles of general utility upon which such cases should be dealt with.

Rule against the absorption of a Municipality.

A special difficulty and embarrassment arose where, instead of an outlying suburb, there was a contiguous municipality. The Commissioners could find one, and apparently only one, precedent for the consolidation of two contiguous municipalities. In the thirteenth year of Elizabeth's reign Weymouth and Melcombe Regis were united into one borough, each having had before that time a separate municipal organisation. The Commissioners had several cases of the kind to consider. The boroughs of Huntingdon and Godmanchester (whose united populations scarcely exceeded 5000 persons in 1831) were separated only by the river Ouse, and the termination of the streets of Huntingdon was only 400 yards from the termination of the streets of Godmanchester. Weymouth and Melcombe Regis were much more widely separated by a harbour. "There can be no question," the Commissioners wrote, "that, by the application of the ordinary rule, we should under the circumstances recommend a boundary including both towns in its circuit." There has, however, always been a very strong disinclination to interfere with a genuine municipal corporation without the consent of the incorporators. The Act of 1835 was dictated by an overwhelming public necessity, and since that time all attempts of

larger corporations to absorb smaller ones against their will have been unsuccessful.[1] The reasons assigned by the Commissioners for non-interference in this case were that the two boroughs were separately included in the schedules of 5 and 6 Will. IV. c. 76, and that a union would practically merge the powers and privileges of the lesser borough in those of the larger. The proposal to amalgamate Penryn and Falmouth was also dismissed, as the distance which separated the two municipalities was more than a mile.[2] The Commissioners considered that Newcastle and Gateshead stood in the same relative position (save for their greater size)[3] as Huntingdon and Godmanchester, being divided merely by the river Tyne. The remaining paragraph upon the subject deals with Plymouth and Rochester, and throws much light upon those difficult problems of local psychology which invariably arise in cases of borough extension.

Our recommendation of boundaries for the boroughs of Plymouth and Rochester did not depend upon precisely the same principles; in each of these cases the question was as to incorporating with the ancient borough a contiguous town not having a municipal charter. There no obstacle presented itself in the provisions of the Municipal Corporations Act; but other considerations have intervened which have seemed to us of sufficient importance to interfere with our recommendation as to these towns. The first thing to be mentioned is what we have learned of the hostility of the inhabitants to the proposal; which argument, though we have not allowed it to interfere with our recommendation of the most appropriate boundary in smaller places, appears to us entitled to some attention when expressed by such large and important bodies of persons as those which

[1] The case of Liverpool and Bootle is very much in point (cf. later at p. 238). Urban districts often apply for a charter in order to protect themselves from some formidable neighbour's lust for territorial aggrandisement, cf. the case of Toxteth and Liverpool, sec. 10, 118 in the evidence given before the Royal Commission on the Amalgamation of London, 1894.

[2] Penryn would probably not care to amalgamate with any other town in England, for it has the unique good fortune to be its own lord of the manor. The principal branches of revenue for municipal and sanitary purposes in 1900 were £513 from rents of corporate property, £50 from markets, £355 from quay tolls, and £79 from harbour dues.

[3] Upon this the Commissioners observe: "It should, however, be remembered that the united population of both those towns scarcely exceeds that of Norwich, and falls far short of the populations of Liverpool, Leeds, and Bristol, which are not thought too extensive to be included in a single boundary," p. 6. Sixty years later Newcastle and Gateshead together were more than three times as populous as Norwich, and had even outgrown Bristol.

constitute the population of these towns. For the sentiments of the inhabitants of Stonehouse and Devonport upon a proposed consolidation with the borough of Plymouth, we refer to the Report of the Circuit Commissioners.[1] And though no similar representations seem to have been made to the Circuit Commissioners at Rochester, we learn from the report of the Commissioners appointed to inquire into the state of Municipal Corporations (p. 859) that the inhabitants of the towns of Rochester and Chatham "entertain strong feelings of jealousy and rivalry, and have long done so," and those Commissioners add, "This is our reason for not recommending a municipal union."

Accordingly the Commissioners of 1837 rather reluctantly decided not to press for a consolidation either of Chatham with Rochester, or of Stonehouse and Devonport with Plymouth. Chatham, it may be of interest to add, was at last incorporated in 1890, and its union with Rochester is therefore less probable than ever. Devonport obtained its Charter of Incorporation in 1837 and is now a county borough. East Stonehouse is an Urban District Council, but combines with Plymouth for port sanitary purposes. Whether "the three towns," as they are called, will ever be one city in constitution as well as in outward appearance, is a question that only time can answer.

As regards the external boundaries of municipal boroughs no general legislation followed upon this report. But the work was not wasted, for the Commissioners had formulated and applied to individual cases the main principles which were to govern private Bill extensions. Mr. Somers Vine,

[1] See vol. iii. of Report *sub* Plymouth. "In fixing the municipal boundary," write the Circuit Commissioners, "the main question which presents itself is the union of Stonehouse and Devonport with Plymouth. The local position of the former would suggest a union as a matter of course; for it is in fact a continuation of Plymouth, and, independently of municipal distinctions, the two form but one town. . . . The advantages of uniting the three in one municipality are obvious. Uniformity of action would be combined with economy in the maintenance of a single official establishment, the same local courts, the same magistracy, and the same police. But notwithstanding these advantages, the prevalent local feelings in both boroughs are mutually opposed to such a connexion." Part of the Stonehouse resolution is worth quoting if only as a type of the similar resolutions passed nowadays when a private Bill to extend boundaries is promoted: "That this meeting . . . are of opinion that if the parish of East Stonehouse (should be absorbed) either by an extension of the boundaries of the old borough of Plymouth, or by a compulsory union under a new charter with the town of Devonport and the parish of Stoke Damarel, an onerous local taxation, far exceeding any equivalent advantage likely to ensue from such incorporation, must of necessity follow."

though he speaks of "the very sensible basis" upon which the determinations proposed by the Commissioners were arranged, does not seem to have appreciated the importance of the report.[1] Nor does he mention that the second part of the Commissioners' work relating to the internal boundaries of the larger boroughs was actually consummated. Under section 39 of the Municipal Corporations Act of 1835 it was directed that certain boroughs in Schedule A should be divided into wards by barristers. The Circuit Commissioners were then asked to assist the barristers with maps, plans, etc.,[2] and then (when the work of the barristers was done) to express their opinion upon each case. It would seem that in most instances the Privy Council followed the advice of the Commissioners and adopted their alternative proposal in those cases in which the division made by the barristers was disapproved. The Commissioners also pointed out that the barristers had misinterpreted the meaning of the concluding words of section 7 of the Act of 1835; they considered, however, that the action of the barristers in excluding liberties, such as the Ainsty of York and the soke of Doncaster, from the borough boundaries, was right in policy though wrong in law; and accordingly a special Act (6 and 8 Will. IV. c. 103) was passed, the effect of which was to make the parliamentary and municipal boundaries of the one set of boroughs (Schedule A of the Act of 1835) coextensive, and to keep the other set of boroughs (Schedule B) within their old municipal limits. This Act and sections 7 and 8 of the original Municipal Corporations Act of 1835—which swept away precincts and detached areas—form the only general legislation on the subject of municipal boundaries in England, and all alterations that have been made in the boundaries of the 178 municipalities recognised by the Act of 1835 since 1837 have been made by private Bill legislation or provisional orders. The principle that the initiative should invariably come from the locality has never been interfered with save in the very exceptional case of London, which was, as we have seen,

Consequences of the Boundaries Report.

[1] Somers Vine, *English Municipal Institutions*, pp. 18, 19.

[2] An admirable map (coloured) of each borough dealt with is to be found in the three volumes which contain the Report of Boundaries Commissioners.

excluded from the operation of the Municipal Corporations Act of 1835. But the redivision of London into municipal boroughs by the London Government Act of 1899 [1] hardly involved any extensions of urban government. The duties of the Commissioners under that Act were confined to the substitution of large for small districts and the simplification of the internal frontiers of the metropolis.

Borough extension since 1837.

Since 1837, however, other complications have arisen and new conditions have grown up which have to be weighed and balanced when a modern municipality is created, or an old one asks to be allowed to extend its boundaries. Such extensions have been sanctioned by Parliament in a great number of cases;[2] but on the other hand the demands of the municipality have often been cut down in committee, or entirely rejected.

Under section 54 of the Local Government Act of 1888 there is an alternative procedure which—in cases where there is no formidable opposition—is less expensive though more tedious than the method of private Bill legislation. By this section whenever the council of any county, or county borough, represents to the Local Government Board—

(*a*) that the alteration of the boundary of any county or borough is desirable; or

(*b*) that the union, for all or any of the purposes of this Act, of a county borough with a county is desirable; or

(*c*) that the union, for all or any of the purposes of this Act, of any counties or boroughs, or the division of any county, is desirable; or

(*d*) that it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough; or

(*e*) that the alteration of the boundary of any electoral division of a county, or of the number of county councillors and electoral divisions in a county, is desirable; or

(*f*) that the alteration of any area of local government partly situate in their county or borough is desirable;—

[1] 62 and 63 Vict. c. 14.

[2] The total area of English municipalities had grown from 726 square miles in 1835, to 1189 square miles in 1879; and the population from 2,193,000 to 8,152,000.

the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry. Numbers of these local inquiries are held every year; and from the full reports of them which usually appear in local newspapers a great deal of information may be derived about the working conditions of local government. The inquiry having been made, and the inspector having sent in his report, the Local Government Board is empowered to make an order. But it is provided (by section 54 (3)) "that if the order alters the boundary of a county or borough, or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, or for constituting a borough into a county borough, it shall be provisional only, and shall not have effect unless confirmed by Parliament."

Extension by provisional order.

The practice of the Local Government Board in these cases appears to correspond fairly closely to that of the Parliamentary Committees, but the Board, as adviser of the Privy Council, is generally supposed to be less inclined than Parliament to the extension of municipal boroughs, seeing that the Board has less control over the municipality than over any other form of local organisation. Their action, however, varies curiously. Thus the Board allowed Southampton to annex the outlying district of Shirley and Freemantle as being a mere continuation of Southampton, though it was not badly administered, and though the local authority opposed annexation. The proposal to include Woolston, on the other side of the river Itchen, was rejected. Plymouth furnishes an instance to the contrary; for in 1893 the Local Government Board refused to ratify the proposal of the Plymouth Corporation to include the urban district of East Stonehouse within the borough, although it seems to have been a case on all fours with that of Southampton. The case of Kingston and Surbiton can be distinguished, for Surbiton claims that its administration is better than that of Kingston, that its system of sewage disposal is distinct from and superior to that of Kingston, and that it is a suburb not of Kingston but of London. No wonder then

that in 1895 the Board refused to allow Surbiton to be absorbed against its will by the ancient borough of Kingston.

Incorporation in self-defence.

We have already observed that there is no modern instance of one municipality being annexed against its will by a neighbour; and there are many of enterprising urban district councils which have sought (and obtained) a charter mainly for the purpose of protecting themselves against absorption. Pudsey, for example, which lies between—and dangerously near to—Leeds and Bradford, was incorporated in 1899 much to the chagrin of Bradford statesmen. Bootle, a mere outgrowth of Liverpool, had a similar success in 1868. It gets its gas and water from Liverpool, and its tram-lines are leased to the Liverpool Corporation. The grant is said to have been obtained through the influence of the late Earl of Derby, and it may be doubted whether a Parliamentary Committee would make a similar grant again under similar circumstances.[1] Perhaps the leading case upon the subject is that of Brighton and Hove. In 1876 Brighton promoted a Bill to annex Hove, an outlying community governed by Improvement Commissioners. The Bill was rejected, and the Improvement Commissioners were eventually succeeded by an Urban District Council. In 1898 Hove itself applied for a Charter of Incorporation. Brighton strenuously opposed. The Urban District Council "admitted that the boundary between Brighton and Hove was not a 'scientific boundary,' passing as it did in some cases through the gardens of houses." But it said, and proved, that Hove was not an "outgrowth" of Brighton; that it had an independent, a separate, to some extent an antagonistic existence; and that it was fully entitled to this step in the peerage of towns. Brighton petitioned the Privy Council for a rehearing, which was granted, and the argument before the Lord President (the Duke of Devonshire), Lord James of Hereford, and Mr. Ritchie was that the granting of a charter might prevent the amalgamation of Brighton and Hove, if at any time they desired to form one town; although Brighton admitted that at the present time there was no case for compelling

[1] See *Royal Commission on Amalgamation of London*, 1894 (c. 7493-1). Evidence, p. 320. Liverpool is now seeking to annex Bootle (1903).

amalgamation. In answer to this argument the Scotch case of Edinburgh and Portobello was referred to.[1] The Privy Council, after consideration, recommended Her Majesty to grant the charter, and Hove is a borough with a mayor and corporation at the present time.[2]

The doctrine of consent.

Consent, which has so far been held to be a condition precedent to the annexation and extinction of a municipality, is not, however, essential to the absorption of territories governed by inferior organisations. Attention and compassionate consideration is always given to the wishes of the inhabitants of any district proposed to be annexed. But, except in the case of a municipality, good government is the paramount consideration. Municipal extensions generally involve an increase of rates in the outgrowth annexed; and it is now common to insert a guarantee of differential treatment for a number of years. Thus in passing the Exeter City Extension Bill of 1875, the Parliamentary Committee recommended that the parish of St. Leonard's thereby incorporated should for a period of five years not be subjected to higher rates than those previously levied. The practice of the Local Government Board seems, in this respect, to correspond pretty closely with that of Parliamentary Committees.

During the rehearing of the Hove application for a charter in 1898, Mr. Ritchie observed:—

> I remember perfectly well the principle on which these things were dealt with by the Local Government Board when I was there. . . . If objection was made to the absorption of an outside area by a borough, a local inquiry was held, and the principle upon which we went was that if the population outside were opposed to annexation, and the outside area was well governed and all their arrangements were of a satisfactory character, annexation was not granted in opposition to the will of the inhabitants, provided the outside area was in every way well and

[1] But this analogy was worthless. Portobello, though a municipal borough, had consented to incorporation "on terms." Leith, on the other hand, which Edinburgh desired also to annex, did not consent, and successfully resisted that part of the Edinburgh Bill, although Leith is physically united with Edinburgh, far more so indeed than Portobello. The attempt of Glasgow to include the borough of Crosshill in 1875 failed for the same reason.

[2] See Mr. F. Balfour Browne's book, *Some Problems in the Law of Compensation*. The article on borough extension from which the above quotation is made is itself drawn largely from an article written by Mr. Balfour Browne, the well-known King's Counsel, and published in the *Law Magazine*, 1877.

properly governed. And again: if an outside area were well governed, and its administration well carried on and not rendered unsatisfactory by reason of its being outside the area, annexation was not granted if the inhabitants were opposed to it.

Other considerations.

The Parliamentary Committees which preside over private Bill legislation are not of course bound by the practice of the Local Government Board in regard to the granting of provisional orders; nor is it at all certain that the practice of the Board is quite adequately or satisfactorily summarised in these *obiter dicta* of Mr. Ritchie. Such considerations as continuity of streets, identity of water and gas supply, participation in the same scheme of drainage, enjoyment of a municipal park, etc., might (most properly in our opinion) induce a Parliamentary Committee to sanction the amalgamation of a well governed outgrowth even against the wish and to the manifest disadvantage of its inhabitants. The greatest good of the greatest number and the economy of large operations are principles which ought not to be ignored in such circumstances; though at the same time something may be conceded to Mr. Chamberlain's maxim, that after a certain point is reached (say half a million) the administrative disadvantages involved in an increase of population are apt to be greater than the advantages. Mr. Ritchie's remarks are frequently quoted by the opponents of extension Bills,[1] but the narrow construction to which they undoubtedly lend themselves has not been adopted by Parliament. Thus when the Liverpool Extension Bill of 1890, which proposed to annex Toxteth Park, and parts of West Derby, Wavertree, and Walton, to Liverpool, came before Parliament, Mr. Hastings, then Chairman of the Police and Sanitary Committee, put the general principle rather differently. Territories, he said, had been annexed to municipalities against the wishes of the inhabitants, but always on grave public grounds such as efficiency of drainage: "We could not consent against the will of the great bulk of the inhabitants, as we are convinced it would be, to annex them to the city

[1] *E.g.* at the local inquiries in Bradford and Harrogate (see local papers October 1898, and January 1899), and by the counsel opposed to the Bristol Extension Bill of 1897.

of Liverpool, unless it could be shown on some sanitary grounds, or on some municipal grounds, there were grave public reasons why the interests of the whole population within the greater district should override the wishes of the inhabitants of these particular districts."

Whether a Bill is opposed or unopposed it is the practice of the Local Government Board to send in a report to the Parliamentary Committee, and Mr. Jeeves, the Town Clerk of Leeds, in his evidence before the Joint Committee on Municipal Trading,[1] mentioned two cases within his own experience in which the Local Government Board, being dissatisfied with the decision given by the Committee of the Commons, sent in a supplementary report to the Committee of the Lords, criticising clauses passed by the Committee of the Commons. "Luckily," he added, "in those two cases, the second House agreed with us, and not with the Local Government Board." These supplementary reports of the Local Government Board are sent in as a matter of course, and are as Mr. Jeeves puts it, "rather a terror" to the promoters of municipal Bills. But the practice illustrates the true position of the Board as a subordinate and advisory department whose vast experience, placed at the disposal of Parliament, should be a valuable and efficient safeguard against the rash and impolitic proposals which sometimes creep into the "omnibus Bills" of adventurous corporations.

So far we have dealt mainly with extensions by private Bill legislation. The new procedure by provisional order has in a great measure replaced the older and more costly plan of extension by private Bill. Statistics are not easily accessible; and therefore it may be well to state, as the result of investigation, that of about 100 extensions in the twelve years following the Act of 1888, at least 75 have been effected by provisional order. The Reports of the Local Government Board for these years (1889-1900) show that the 75 extensions were the results of over 120 applications, 45 at least of which were refused, referred back to the Town Council, or withdrawn. It has apparently become the practice to include in local Bills only those proposals to extend boroughs which

Extensions by provisional order.

[1] House of Commons paper 305 (1900), p. 238.

involve large issues, and are likely to excite formidable antagonism, and to go to the Local Government Board, as a general rule, where serious opposition is not expected, or where the scheme affects only a small area. There are, of course, important cases, such as those of Southampton and Kingston referred to above, which have come before the Local Government Board; but the majority of applications with which the Board is called upon to deal aim at the inclusion of suburban outgrowths rather than at the absorption of neighbouring and originally independent, though unincorporated towns. Where the proposal is merely to include a small outgrowth somewhat different considerations arise to those previously dwelt upon. The outside authority is generally a Rural District Council or Parish Council, whose consent is naturally treated as less material than that of an urban authority. The first question asked by the Board is whether the municipality (often a small one) is sufficiently well governed itself to be entitled to extend its jurisdiction; and many of the abortive applications above referred to have been refused without inquiry, because the borough in question did not itself possess an adequate system of drainage or water supply, and had not shown either efficiency or power of organisation. If a *prima facie* case is made out, an inquiry is held. An inspector is sent down by the Board to examine the area affected. He takes evidence as to whether the area to be absorbed is or is not actually urban in character, and whether it depends for its existence and prosperity upon the proximity of the borough—whether in fact its life and trade are bound up with that of the borough. It need not be entirely covered with houses, but it must be shown to be "building land," or land which will probably be offered for building at no distant date. The local landowners are generally important witnesses, and are usually, as is natural, opposed to extension owing to their fear of an increase of rates. The feasibility of incorporation with the borough's drainage and water-supply system is also taken into account. The attitude of the Board towards proposals to bring large tracts of agricultural land within municipal boundaries is shown by the following extract from its last report:—

We desire to observe, in connection with this branch of our work, that there is a tendency on the part of some Town Councils to include in their representations to us in favour of alterations of borough boundaries large areas of agricultural land. The reason generally given for adopting this course is that it is unfair to include within the municipal boundary only the populous and therefore highly-rated portion of a suburban parish, and thus to leave the rural and agricultural areas to provide for the cost of such works as may be necessary in these areas. We do not consider, however, that large areas of an essentially rural character which are not likely to be developed for building purposes in the near future should be brought within municipal limits.

In conclusion, it may be interesting to summarise the main effects of an extension of borough boundaries. It has been hinted that the Local Government Board does not as a general rule favour the granting of a new charter, or the extension of an existing one. There are several important respects in which the Board's control of a district is relaxed when it obtains municipal powers. But for the inhabitant ratepayers far the most important and serious point is that incorporation involves the withdrawal of the incorporated area's accounts from the scrutiny of the district auditors, and the substitution of elective auditors, who are often mere amateurs, and are seldom disposed to take an austere view of—say—the personal expenses of deputations. With every enlargement of municipal areas, the prospect of substituting government audit of their accounts for the present system becomes more remote. Where a county borough is created or extended, the jurisdiction of the County Council is also curtailed, and that body may be relied upon to interpose as many obstacles as possible to the change. Complicated questions of financial adjustment then arise, which, on the failure of the county authorities to agree, have generally to be referred to arbitration. The county loses, and the borough gains, the rateable value of the added area, and even where a non-county borough is extended the rateable value of the county for some purposes, *e.g.* police, is frequently diminished. The incorporation of a complete parish or urban district involves the dissolution of the parish or district council, and sometimes of a school board as well; and if the area is added to a parish in the borough new provisions are required for the election of

Objections to municipal extension.

Guardians. The officers of these dissolved authorities lose their places, and unless posts can be found for them in the extended borough, have to be compensated. The lists of Parliamentary and local electors require revision. An adjustment of property is often necessary, and debts contracted by the absorbed body must be taken over by the borough. An extension often involves an alteration in the wards of the borough, and also an increase in the number of councillors and aldermen. To obviate injustice or buy off opposition a preferential rate is very often levied in the added area for some years after the extension. In short, a great variety of considerations must of necessity influence a decision, both of Parliamentary Committees and of the Local Government Board, in cases of borough extension. The subtlety of legal art is hard put to it to match the complexity of nature. If the decision is in favour of extension, the local Act or provisional order embodying it must provide for a multiplicity of details to enable the extension to be equitably carried out to the satisfaction of all parties; and even then much has often to be left to the Local Government Board or to an arbitrator to settle.

CHAPTER II—*Continued*

MUNICIPAL BOROUGHS—THEIR PERSONAL BASIS

II. *The Burgess: his Rights and Duties*

If the existence of a municipality implies the possession of a definite territory, it also implies, at least at the present time,[1] the existence of inhabitant burgesses or citizens,[2]—that is to say, of persons living in the borough or city and qualified to vote for the Borough or City Council. From another point of view the burgesses or citizens are members of the public corporation into which their community has been transformed by the grant of a charter under statute. The constitution of an English municipality is based upon the community of its members, and its members are essentially inhabitants. The possession of a permanent home within the corporate limits is the most distinctive mark of corporate membership. "Municipal Corporation" is expressly defined in the principal Act as "the body corporate constituted by the incorporation of the inhabitants of a borough."[3] A person is not deemed a burgess unless he is enrolled as a

The qualifications of a burgess.

[1] This caution may be necessary to appease the antiquarian objection that Old Sarum was an instance of a borough without inhabitants.

[2] Before the Municipal Corporations Act of 1835 burgess-ship was in many places an office; cf. Merewether and Stephens' *History of Boroughs*, pp. 2225 and 2226. The new statutory burgess-ship is not an office but a franchise; cf. *In re* Milner, 5 Q.B. 589, and R. *v.* Ponsonby, 1 Ves. 1. By section 7 of the M.C.A. 1882 "borough" includes city and "burgess" citizen.

[3] See M.C.A. 1882, sec. 7. By section 8 the official style or "corporate name" of the body corporate is declared to be "The Mayor, Aldermen, and burgesses of the borough of ——"

burgess,[1] and the chief privilege conferred by enrolment is the right to vote at municipal elections. What, then, entitles a man to be enrolled, and so to become a burgess or municipal voter? The answer to this question is contained in section 9 (2) and (3) of the Act of 1882.

1. *Qualifications of a Burgess.*—By section 9 (2) a person shall not be entitled to be enrolled as a burgess (*i.e.* in the burgess roll) unless he is qualified as follows:—

(*a*) Is of full age;[2] and

(*b*) Is[3] on the 15th July in any year, and has been during the whole of the then last preceding twelve months, in occupation, joint or several, of any house, warehouse, counting-house, shop, or other building[4] in the Act referred to as a qualifying property in the borough; and

(*c*) Has during the whole of those twelve months resided in the borough or within seven miles thereof;[5] and

[1] The old freemen or burgesses, to whom certain privileges were reserved under the Act of 1835, are a distinct class. See sections 201-209 of the M.C.A. 1882. Nor have persons upon whom the freedom of the borough is conferred under the Honorary Freedom Act 1885 a right to vote or any other of the ordinary rights and duties attaching to membership of a municipal corporation.

[2] A person attains full age in law on the day before his twenty-first birthday.

[3] For "is" read "was." Hargreaves *v.* Hopper 1, C.P.D. 195.

[4] The qualifying property need not be the same throughout the qualifying period of twelve months; see sec. 33 (2) of the M.C.A. 1882. House includes part of a house; cf. sec. 31, M.C.A. 1882.

[5] The measurement is presumably to be made from the nearest point on the municipal boundary and by a straight line on an Ordnance map. See section 231 of the M.C.A. 1882. A burgess may be absent on business from his shop or residence for as long as four consecutive months during the qualifying year without being disqualified, under section 2 of the Electoral Disabilities Act 1891 (54 and 55 Vict. c. 11, 17 (3).

What "resided" means in law has never been precisely defined. But to "reside" in law a person must at least have a room in which he has a right to sleep, and must, at any rate occasionally, sleep there. In other words, the residence must not be merely colourable. It has been held that to sleep twelve times in six months does not constitute residence; see Whitthorn *v.* Thomas, 7 Man. and G. 1.

As regards the rating qualification, it should be added that payment by the landlord in consequence of an arrangement with the tenant constitutes a valid payment. At one time the system of compounding rates disqualified the tenants or occupiers from voting; and no doubt the system does tend to disguise the real burdens of municipal policy from a large class of voters. The history of the change may be read in Gneist's *Self-Government*, p. 557. It was a con-

(*d*) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate; and

(*e*) Has on or before the 20th of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding 5th of January.

Besides these positive qualifications for the burgess-roll, another has been added by the County Electors Act 1888 (sec. 3), which provides that "every person who is entitled to be registered as a voter in respect of a ten pounds occupation qualification within the meaning of the provisions of the Registration Act 1885, which are set out in the schedule to this Act, shall be entitled to be registered as a county elector and to be enrolled as a burgess in respect of such qualification, in like manner in all respects as if the sections of the Municipal Corporations Act 1882 relating to a burgess qualification included the said ten pounds occupation qualification."

The Act of 1882 then proceeds to disqualify by section 9 (3) three classes of persons who might satisfy the conditions contained in the second subsection. These three classes are aliens, persons who during the qualifying period of twelve months have received parochial or other relief or alms,[1] and thirdly, persons disentitled under any Act of Parliament. It will be observed that women are not expressly disqualified from voting. Indeed, they are expressly qualified by section 63 of the Municipal Corporations Act: "For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women." But section 63 only benefits single women. It does not remove from married women the disability imposed by the status of cover-

Disqualifications.

sequence of the second Reform Act of 1867. The compound householder's vote may be compared to the old Potwalloper's vote as it existed in many towns before the general corruption of the municipal franchise in the seventeenth and eighteenth centuries.

For meanings which have been assigned by the Courts to various words in the above section, and for a more exhaustive discussion of minor points of interpretation, see Arnold's *Law of Municipal Corporations* (4th edition, 1894).

[1] Medical or surgical attendance and medicine, paid for out of the poor rate, do not, however, disqualify a burgess from being on the register and from voting (see Medical Relief Disqualification Act 1885, 48 and 49 Vict. c. 46).

ture,[1]—a status based on the legal theory that a woman's husband is her guardian, protector, and representative.

There is, as we have seen, a formal mark, or criterion, of municipal citizenship or burgess-ship—namely, enrolment as a burgess. But enrolment is not merely a formal mark: it is also an indispensable condition. A person cannot vote at a municipal election unless his or her name is on the burgess-roll. The burgess-roll is a revised copy of the parish burgess lists examined and signed by the Town Clerk. Owing, however, partly to the separation of Poor Law administration from other municipal functions, and partly to the convenience of combining the municipal with the Parliamentary register, the preparation of the roll is not under the complete control of the Town Council. Under the present law, which is far from convenient, the preliminary lists (called the parish burgess lists) are prepared in the first instance by the Overseers of the parish.[2]

Enrolment.

The work of registering electors for municipal purposes (which is of course absolutely distinct from the holding of elections) is carried out by the co-operation of the Town Clerk with the Clerk to the Overseers and the Revising Barrister. In some boroughs, however, the Overseers are now appointed by the Town Council, and there the work of preparing lists, giving the necessary notices, etc., is done entirely under the direction of the Town Clerk, while the duty of revising them annually falls upon the Revising Barrister, the municipal office of Revising Assessor having been abolished by the County Electors Act 1888.

[1] See Flintham *v.* Roxburgh, 17 Q.B.D. 44, and Reg. *v.* Harrald, L.R. 7, Q.B. p. 361, where it was held on a *quo warranto* against a town councillor who had been elected by a majority of one, that a woman otherwise qualified and on the burgess list is disqualified by marriage from voting at an election of town councillors.

[2] See M.C.A. 1882, section 44 (1), and the County Electors Act 1888, section 4 (7), which apply the Parliamentary and Municipal Registration Act 1878 (41 and 42 Vict. c. 26), sections 15-23, to all municipal boroughs. The Interpretation Act of 1889 defines "the Parliamentary register of electors" as "a register of persons entitled to vote at any Parliamentary election." The same Act defines the expression "local government register of electors," as respects a county borough or other municipal borough, to be the burgess-roll. Glen, p. 1609, explains that, "The burgess-roll in a municipal borough is the authoritative list of the persons enrolled as burgesses, who alone are entitled to vote at the election of borough councillors" (cf. later, p. 280 *sqq.*).

If qualification to vote at elections is one distinctive mark of burgess-ship, another is the duty which rests upon each burgess of accepting corporate office if he is duly elected.

Duty of burgesses.

> Every qualified person elected to a corporate office, unless exempt under this section or otherwise by law,[1] either shall accept the office by making and subscribing the declaration required by this Act within five days after notice of election, or shall in lieu thereof be liable to pay to the Council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor, one hundred pounds, as the Council by bye-law determine.[2]

If there is no bye-law the penalty is to be £25 in the first case and £50 in the case of the mayor.[3] Certain persons, however, otherwise qualified, are exempted from the fine if they refuse to serve, namely—

(*a*) Any person disabled by lunacy or imbecility of body or mind, or by deafness, blindness, or other permanent infirmity of body.

(*b*) Any person who is above the age of sixty-five years, or has within five years before the day of his election either served the office or paid the fine for non-acceptance thereof.

Either of these classes is entitled to exemption if the claim is made within five days of election.[4]

Roughly speaking, the qualifications of burgess and councillor, of elector and elected, at the present day correspond. Under the Act of 1835 the property qualification of a councillor was higher than that of a burgess, though the residential qualification was more lax, as a councillor might reside at a distance of fifteen instead of at a distance of seven miles from the borough. Curiously enough, the property qualifications still stand, so far as relates to candidates living in the outer ring of more than seven and less than fifteen miles from the borough, by the 2nd subsection of the 11th section, though by the 3rd sub-

Qualifications of Councillor.

[1] *E.g.* under sec. 12. [2] Sec. 34 (1) of M.C.A. 1882.

[3] Sec. 34 (2). In many towns, however, this fine has been reduced by bye-law to a nominal amount: *e.g.* in Leeds to a shilling and in Sheffield to ten shillings (see Standing Orders). [4] Sec. 34 (3).

section all burgesses are made eligible for election to the office of councillor. Thus all municipal electors and a small propertied class of non-electors are eligible for the Municipal Council.[1]

Whilst, however, in one direction the field of candidates qualified for the Municipal Council is wider than the municipal electorate, other disqualifications have been introduced which considerably narrow the choice. In the first place, as we have seen, no woman may hold municipal office. Then, again, by section 12 (1)—

> A person shall be disqualified for being elected and for being a councillor, if and while he—
>
> (*a*) Is an elective auditor or a revising assessor, or holds any office or place of profit other than that of mayor or sheriff in the gift or disposal of the Council; or
>
> (*b*) Is in holy orders or the regular minister of a dissenting congregation; or
>
> (*c*) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the Council.

The third of these disqualifications, which constitutes an indispensable security for the purity of municipal life, is

[1] The section in question runs as follows:—

Sec. 11 (1) The councillors shall be fit persons elected by the burgesses.

(2) A person shall not be qualified to be elected or to be a councillor unless he—

(*a*) Is enrolled and entitled to be enrolled as a burgess; or

(*b*) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles, but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made (sec. 49), and

(*c*) In either of these cases is seized or possessed of real or personal property, or both, to the value or amount in the case of a borough having four or more wards of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value of thirty pounds, and in the case of any other borough of fifteen pounds.

(3) Provided that every person shall be qualified to be elected and to be a councillor, who is at the time of election qualified to elect to the office of councillor, which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification.

(4) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election, and continues to be, qualified in some other manner.

couched in language very similar to that of the famous Act of 1782, which made it illegal for a member of Parliament to be interested in contracts with the Government.[1]

The severity of this last and most important disqualification is mitigated (perhaps unduly) by the subsection (2) which follows :—

> But a person shall not be so disqualified or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—
>
> (*a*) Any lease, sale, or purchase of land or any agreement for the same, or
>
> (*b*) Any agreement for the loan of money, or any security for the payment of money only, or
>
> (*c*) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted, or
>
> (*d*) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough, or
>
> (*e*) Any railway company or any company incorporated by Act of Parliament, or royal charter, or under the Companies Act 1862.

It has been suggested that both as regards Parliament and local authorities a distinction should be drawn between large and small shareholders in a company, and that a director in a company contracting with the authority should be disqualified exactly as if he were a partner in a firm. Another very obvious point insisted upon in the Parliamentary debates was that the law applicable to ministers of the Crown should be stricter than the law applicable to private members. The sections relating to the paid officers of a local authority are more severe than those relating to members of the Council. In a Municipal Council, however, every councillor or alderman is an administrator as well as a deliberator, and therefore his position as regards contracts is comparable to that of a

[1] In the autumn and winter of 1900 the subject was canvassed very hotly in Parliament, the Municipal Councils, and the press, partly in consequence of allegations made against Mr. Joseph Chamberlain, then Colonial Secretary, and Mr. Austen Chamberlain, Civil Lord of the Admiralty, partly owing to revelations made by one of the elective auditors of Manchester which led to the resignation of Alderman Higginbotham. The subject was brought before many other Town Councils, and quite a series of resignations followed, though in many cases it was the spirit rather than the letter of the law which had been broken.

minister rather than of a private member of Parliament. But the flaws in the Parliamentary provisions are much more serious than any which have been detected by experience in section 12 of the Municipal Corporations Act of 1882, which does not differ greatly from the corresponding section (28) in the Act of 1835.

We have now laid bare the two bases upon which the structure of an English municipality rests. The first basis is territorial; the second is personal. The limits of the one are defined by prescription or particular legislation. There has been no general statutory extension of borough boundaries. But the qualifications for voters and representatives are, as we have seen, strictly defined by the general or public legislation, and it is through this channel that representative democracy has been introduced.

CHAPTER III

THE TOWN COUNCIL, OR THE REPRESENTATIVES OF THE BURGESSES[1]

A MUNICIPAL borough can transact business through the Borough Council, and through the Borough Council only. In the words of section 10 (1) of the Municipal Corporations Act 1882, "the municipal Corporation of a borough shall be capable of acting by the Council of the borough, and the Council shall exercise all powers vested in the Corporation by this Act or otherwise." The Corporation itself is the whole body of Aldermen, Councillors, and Burgesses, with the Mayor at their head. The Council is the voice and hand of the Corporation—the sole interpreter of its will, and is therefore popularly, but of course erroneously, identified with the Corporation. The Council consists of the Mayor, Aldermen, and Councillors.[2] The Councillors are fit or qualified persons[3] elected directly by the Burgesses. They are elected for a term of three years, and a third of their whole number goes out of office each year.[4] The number of the Council is fixed in the charter, and varies very widely, though it is usually more or less in proportion to the size of the town. The smallest Town Councils are composed of 3 Aldermen and 9 Councillors; the largest (Liverpool) has 90 Aldermen and 30 Councillors. The only general rule laid down by the Legislature with regard to

Corporation and Council.

The number of Councillors.

[1] Cf. sections 10-16, 30, 212, etc., of the M.C.A. 1882.

[2] 45 and 46 Vict. c. 50, sec. 10 (2).

[3] M.C.A. 1882, sec. 11, and see last chapter.

[4] M.C.A. 1882, sec. 13. The ordinary day for the election of Councillors is the 1st of November (sec. 52).

number applies to the larger boroughs divisible into wards. When, in accordance with section 30 of the Municipal Corporations Act of 1882, a borough is divided into wards (in electoral divisions), or its existing wards are altered,

> The number of Councillors assigned to each ward shall be a number divisible by three; and in fixing that number the Commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

It is interesting to observe that in these directions to the Commissioner a small though indirect concession is made to the view that large ratepayers should have more voting power than small ratepayers. A distinct though indirect limitation is thus imposed upon what appears to be the purely democratic character of the municipal franchise.

There is, however, another and more important check upon municipal democracy. The Council is not exclusively composed of Councillors, or members directly elected by the ratepayers. Two other elements, Aldermen and Mayor, are required by law to complete the Council. In the words of the statute, Aldermen are "fit persons elected by the Council, and their number must be one-third of the number of the Councillors." [1] Every person qualified to be elected Councillor for a borough is also qualified to be elected Alderman. Elected Councillors are also qualified to be elected Aldermen; but if a Councillor is elected, and accepts the office of Alderman, he vacates that of Councillor. An Alderman, however, has advantages over a Councillor in dignity, in the avoidance of a contested election, and in the length of his term of office, which is six instead of three years.[2] Councillors and Aldermen together elect the Mayor, who is described as "a fit person elected by the Council from among the Aldermen or Councillors, or persons qualified to be such." [3]

Aldermen and Mayor.

Not uncommonly a Municipal Council, for the sake of

[1] See M.C.A. sec. 14 (1) and (2). This provision makes it necessary for the total number of Councillors to be divisible by three in boroughs without wards, as well as the number of Councillors in each ward in boroughs with wards.

[2] M.C.A. 1882, sec. 14 (3), (4), (5).

[3] M.C.A. 1882, section 15 (1). This subsection amends sec. 49 of the M.C.A. 1835, in which the last six words did not occur. Under the Act of 1835, the Mayor was required to be an Alderman or Councillor at the time of his election.

securing a wealthy, titled, or occasionally even a distinguished figure-head, takes advantage of this power to elect as Alderman or Mayor a man who has had no experience of municipal work. In many Councils, however, a pretty strict rule or custom is observed against the election of outsiders as Aldermen. In Nottingham, for example, a man is scarcely ever advanced to the aldermanic bench unless he has served previously as a Town Councillor. The office of Councillor is regarded as a kind of apprenticeship, and a Councillor has to be elected "perhaps two or three times"[1] before he will be allowed to sit on the aldermanic bench. Indeed, complaints have been made in some towns[2] that Aldermen are too frequently ineffective veterans, the office being regarded as a sort of honorary pension, or reward for exhaustion, and the efficiency of the Council sacrificed for sentimental reasons. Service, they say, is not allowed to have its reward until it has had its effect.

The Mayor's term of office is limited to a year, so that he is the least, as the Alderman is the most, stable element in the Council. His election completes the Municipal Council, and the municipal community is then provided with the sole lawful organ for the expression of its will in administration and government. The Mayor is empowered to appoint "from time to time" an Alderman or Councillor to act as deputy Mayor during his illness or absence. Such an appointment must be signified to the Council in writing, and recorded in their minutes. A deputy Mayor has all the powers of the Mayor, "except that he shall not take the chair at a meeting of the Council, unless especially appointed by the meeting to do so, and shall not, unless he is a Justice, act as a Justice, or in any judicial capacity." The appointment of a deputy Mayor is made annually at the first meeting of the Council on the 9th of November.[3]

[1] We quote the evidence of Sir Samuel Johnson (Town Clerk of Nottingham) given before the Royal Commission on the Amalgamation of London, 1894 [c. 7493-1], p. 295. Even in Nottingham, however, an exception was made in the case of Sir Samuel Johnson's predecessor in the office of Town Clerk. He was made an Alderman "as a compliment, and because they thought he was a repository of valuable information."

E.g. Huddersfield.

[3] Another person, often of some authority, is the ex-Mayor, *i.e.* the Mayor of the year before.

Continuity of persons and municipal policy, which is favoured by the retirement of the Councillors by thirds, is further assisted by the aldermanic system. Instead of retiring simultaneously, one-half of the whole number of Aldermen goes out of office every third year, the half to go out being those who have been Aldermen for the longest time without re-election.[1] The ordinary day for the election of Alderman (as of Mayor) is the 9th of November, *i.e.* eight days after the election of Councillors. The Aldermen are elected immediately after the election of Mayor. Each Councillor and non-retiring Alderman has as many votes as there are aldermanic seats to be filled. The outgoing half of the Aldermen may not vote, but the half who remain in office may. This last provision is an extreme example of that desire for continuity which pervades the English system of municipal government. The result is that, where parties are pretty evenly divided, the party in possession, with the help of its surviving Aldermen, can often obtain a fresh lease of power, although the elections have placed it in a minority as regards elected Councillors. We may borrow an illustration given by Mr. Clare (then Town Clerk of Liverpool) to the Royal Commission on the Amalgamation of London :—

The election of Alderman.

> Suppose that in Liverpool, where we have 16 wards, there happened to be 27 Councillors elected representing one party, and 21 representing the other party. If the 21 have, to start with, 8 Aldermen to add on to their number it makes them 29. Consequently when it comes to electing the 8 Aldermen in the place of the 8 retiring, the 29 can just re-elect 8 of their own political party, and so get a working majority in the Council of a different complexion to the majority returned by the ratepayers.

Mr. Clare gave it as his opinion that Aldermen ought not to vote for Aldermen, and indeed the plan is strangely out of harmony with the spirit of popular and representative institutions.[2] In case of an equality of votes, the chairman, although as an outgoing Alderman or otherwise not entitled

[1] See M.C.A. 1882, sec. 14 (6) and (7).

[2] See Minutes of Evidence taken before the Royal Commission on the Amalgamation of the City and County of London [c. 7493-1], p. 318. The Town Clerk of Nottingham agreed with Mr. Clare ; see p. 296 of the same volume.

to vote in the first instance, has a casting vote. Finally, in the words of the statute, "the persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected."[1] In each of the three corporate offices of Mayor, Alderman, and Councillor a vacancy is created either by bankruptcy or by absence. Absence sufficient to disqualify, and render the office vacant, means in the case of the Mayor continuous absence, not caused by illness, from the borough (why not from the Council and its committees) for more than two months, and for more than six months in the case of an Alderman or Councillor.[2]

The Town Council being an indispensable condition of municipal life and government in England, the official part of the cost of the annual elections is payable by order of the Council out of the borough fund, in the same way as the cost of preparing the burgess-roll.[3] This constitutes a very important point of difference between Parliamentary and municipal elections. Parliamentary candidates have to pay, in addition to their expenditure upon placards, meetings, etc., considerable sums to the returning officer, so that it is almost impossible for a poor man to enter Parliament without sacrificing his independence. This payment of the official expenses of a municipal election out of the borough fund flows from the recognition that all burgesses have a legal interest in the filling of corporate offices. Thus a burgess of the borough, and no other person, may bring an action to recover a fine from any unqualified person for acting in a corporate office.[4]

Cost of municipal elections.

[1] See M.C.A. 1882, sec. 60 (7). The whole section deals in the election of Aldermen. It is a pity we have no convenient word to distinguish direct from indirect election. Appointment suggests a paid office, co-option outsiders. Perhaps selection is the best word.

[2] See M.C.A. 1882, sec. 39.

[3] See M.C.A. 1882, sec. 140, and Schedule V., Part II. (1), where, among payments which may be charged on the borough fund by an order of the Council, the following are specified: "The payments incurred by overseers, and by the town clerk and other municipal authorities in relation to the enrolment of burgesses, and the holding of municipal elections, or so much of those expenses as is not otherwise provided for under section 30 of the Parliamentary and Municipal Registration Act 1878." Cf. Franqueville, *Le Gouvernement et le Parlement Brittanniques*, vol. ii. p. 478.

[4] M.C.A. 1882, sec. 224.

Applications may also be made to the High Court under section 225 of the Municipal Corporations Act for a *quo warranto* against any person claiming to hold a corporate office, or for a *mandamus* "to proceed to an election of a corporate officer." Only by such applications to the ordinary courts of justice can the representatives of the burgesses be compelled to comply with the provisions of the law, and to fulfil the duties imposed upon them. There is no central department of the administration which has any power to interfere with municipal elections, to disqualify persons for office, or to compel those who are disqualified to retire. To what extent and in what respects the Town Council is subordinated to the central government is a subject for later inquiry. Here we need only emphasise the fact that in the making of the Borough Council by direct and indirect election,—that is to say, in the creation of the machinery which is responsible for the whole of municipal government,—no central department has any appreciable share, or exerts any influence whatsoever. An English Town Council is distinguished from municipal bodies in other countries in that it cannot be dissolved by any administrative action of the central government, however much it may neglect its duties. The election of their Council is the absolutely free and independent act of the burgesses; and the law expects the individual burgess to protect his own rights, and in his own interests to prevent any infringement of the law. A suspension of local elections is incompatible with the constitutional principle, well understood in England, that local government must be controlled and carried on by the people of the locality.[1]

Absence of central supervision over elections.

In the eyes of an Englishman, the exercise of any sort of supervision or influence by a central department over the election of a local authority seems incompatible with this grand principle of local self-government. The management of corporate affairs is put as completely and fully into the hands of a Council elected by the local burgesses, as are national

[1] That the confidence is not misplaced was again shown by the readiness and determination with which, after the Manchester disclosures of 1900, already referred to, burgesses in many boroughs compelled their councillors to undertake a strict and rigorous investigation of the conditions under which municipal contracts were made and held.

affairs into the hands of Parliament. Accordingly, to an English constitutional lawyer the bare idea of giving the Crown or a department of government power to appoint a fixed proportion of a Town Council would be perverse and unintelligible. It is one of the unwritten principles of the English constitution—a characteristic of English government for well nigh a thousand years—that local affairs should be administered by local representatives. But this same local autonomy, this freedom from the administrative interference of a central bureaucracy, which stamps English local government as a whole is the particular mark of the municipality. The Municipal Council has more freedom and independence than any other local authority, because, although like other local bodies the Municipal Council is strictly bound by statutes, these statutes give a minimum of supervision and control to the central administration. Autonomy, then, and self-government are terms particularly applicable to a municipal corporation, because it is peculiarly free to govern itself within the administrative sphere marked out for it by the public and private legislation of Parliament.[1] If the interests of the nation as a whole are affected it is for Parliament, not for the Crown, to intervene. If a Corporation is badly managed it is for the members to put things to rights. They are the persons concerned. Such are the old theories of English law and policy as regards municipal corporations. It is true that modifications have been introduced; but still the principle holds good

[1] In the case of municipalities there are fewer exceptions than in the case of other local authorities to the rule that even statutory duties can only be enforced by the ordinary courts of law. The ancient weapons of the common law, the writs of *certiorari*, *mandamus*, and *quo warranto*, can still be employed against a Corporation or its officers. But these and the ordinary remedies by action are as open to a private citizen as to a minister. There are, however, a variety of enactments to protect public authorities and their officers from the consequences of committing illegal acts by mistake; cf. Blackburn J. in Selmes *v.* Judge, L.R. 6 Q.B. 727. But such protection must not be afforded to an unreasonable or absurd proceeding. In 1893 the Public Authorities Protection Act (56 and 57 Vict. c. 61) was passed "to generalise and amend certain statutory provisions for the protection of persons acting in the execution of statutory and other public duties." By section 1, no such action, prosecution, or other proceeding shall lie unless it is commenced within six months next after the act, neglect, or default complained of. But it may be noticed—and here we see a slight bureaucratic or continental tendency—that section 1 "shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority."

that the election of the municipal authority and its chief officers is a purely local act, and depends entirely upon the local electorate—the burgesses or members of the Corporation —and their representatives. All the reforms of modern times and all the devices of central control have failed to shake this first and main pillar of local autonomy.

We have now described the constitution of the Town Council. It is freely elected, without interference from the central government. It is a single and united body, though created by a duplicate process. Three-quarters of its number are Councillors elected directly by the burgesses; the remaining quarter consists of Aldermen elected indirectly by the Councillors. At the head stands a Mayor, elected by the whole body of representatives. There is no distinction between Councillors and Aldermen, except in the modes of election and in the length of their respective terms of office. Their rights are equal, their legal powers are identical. They deliberate and govern in common. They have no power to act separately. There is no such thing as an assembly of Councillors or an assembly of Aldermen. No such separation is recognised by law or attempted in practice.[1] The aldermanic office is merely a coveted distinction, which confers six years' immunity from contested elections. In the eyes of the law the only superiority of an Alderman over a Councillor is one which flows naturally from the conditions of his appointment. At an election of Councillors for a ward, the returning officer shall be an Alderman assigned for that purpose by the Council.[2]

The unity of the Council.

The superiority of a Mayor to an Alderman resembles that of an Alderman to a Councillor. His position conveys an access of dignity rather than of power. As an Alderman presides at a ward election, "at an election of Councillors for

[1] One of the mistakes of Gneist's *Self-Government* is the analogy which he invents between the Aldermen of English boroughs and the *Magistratsbehörden* of Prussian municipalities. The Aldermen, according to Gneist, are Ratsherren who form an inner chamber, and are preferred in the allocation of committees (*vorzugsweise an den Commissionen beseitigt sind*). As a matter of fact many Councils have standing orders which expressly forbid the over-representation of Aldermen on committees.

[2] M.C.A. 1882, sec. 53 (2).

a whole borough the returning officer shall be the Mayor."[1] It can hardly be said that the law gives him any substantial powers in addition to those possessed by an ordinary member of the Council. It would be wholly erroneous to class him with the Stadt-bürgermeister of Germany or Austria. The Mayor is a social dignitary, the figure-head of a representative body. The Prussian Burgomaster is a powerful administrative officer, who is to a large extent the servant of the government and the master of the town. The English Mayor is in no sense a ruler or administrative chief. He is the official representative of the town, so far as an English town can be said to have an official representative. He has both social and magisterial precedence in the borough.[2] As such, and in consequence of the expenses which are often necessary, especially in large towns, for social functions, and for the entertainment of distinguished visitors, he is sometimes allowed a salary. In some places this is absolutely necessary if a poor man is elected. At Nottingham, for example, where the Mayor gets no salary, his average expenditure "is between £1000 and £2000 a year if you put in the subscriptions. There is not a football society that he is not called upon to support, or in addition to that to give some piece of plate to be contended for. Then he is called upon to give prizes to the schools and all sorts of things."[3] It is usually the custom for a Borough Council, when it desires to spend money upon festivities, receptions, or for other purposes not contemplated or authorised by Acts of Parliament (and therefore in strictness illegal), to vote the required amount as remuneration to the Mayor under section 15 of the Municipal Code.

Character of the Mayor.

[1] M.C.A. 1882, sec. 53 (1).

[2] M.C.A. 1882, sec. 15 (5): "He shall, subject to the provisions of this Act respecting Justices, have precedence in all places in the borough." The reference is to section 155 (2), where his precedence over county Justices is restricted to borough business, and he is expressly denied precedence "over any stipendiary magistrate engaged in administering justice."

[3] See evidence of Sir Samuel Johnson, the Town Clerk of Nottingham, before the Royal Commission on the Amalgamation of the City and County of London (1894), c. 7493-1, p. 313. The witness regretted that some proper provision was not made for keeping up the dignity of the office. The expense shut out "a very large class of very competent people," who had the time, the education, and every requirement except the fortune.

By virtue of his office the Mayor is not only a borough magistrate, but also chairman of the borough bench,[1] and he remains a Justice in the year following his mayoralty. But the municipal and social demands upon his time are so great that he cannot be regular in his attendance on the bench. The same remark applies to his part in municipal administration. At Nottingham, for example, to quote again from the evidence of Sir Samuel Johnson—

> The Mayor is *ex officio* a member of every committee, and now and then he attends a committee; if he thinks the matter is of any importance, and he would like to be there, he attends; but he is occupied so much with the *ab extra* duties of his office, with the amenities of the office—every morning at ten o'clock he has to sit at his private rooms, and he is occupied for a couple of hours receiving and hearing what people have to say, and so forth. They come to him to talk about everything, especially for subscriptions, and that sort of thing, and the Mayor of the town seems to be a sort of repository for everybody's grievances.

Moreover, the Mayor is often called upon to take the chair at public meetings, though seldom, as in Scotland, at political meetings.[2] In Nottingham "he has scarcely a night at home to himself," being expected to preside at every non-political meeting of any consequence. In Liverpool the social functions of the Mayor are so important that the Town Clerk in 1894 spoke of them as "official duties":—

> "His duties consist in being in the Town Hall, I think, pretty well from 10 till 4 every day, to be at the beck and call practically of everybody who goes there." His charitable duties have "developed now into such a system that every charity organisation has its annual meeting, if not its committee meetings, at the Town Hall, at which the Lord Mayor is always supposed to preside, to make a speech, and—I believe—to subscribe to the funds."

In smaller towns, of course, the Mayor has more time to attend to his magisterial duties, and to the work of the Council and its committees. In some towns there have been complaints that active Mayors sometimes exert too much influence by means of what is called the Mayor's parlour

[1] At Liverpool he is (nominally) Judge of the old civil Court of Passage; cf. the Mayor's Court in London.

[2] When, however, the National Liberal Federation met at Bradford in the spring of 1901, the Mayor (a Conservative) welcomed the delegates.

committee—an informal meeting of a few prominent friends of the Mayor (Aldermen and Councillors), who arrange beforehand what shall be done in the Council. But such cases are unusual. Representative institutions cannot be worked from behind the scenes, save by men of exceptional cleverness, or when the public are exceptionally apathetic. A sharply contested election soon restores the municipal constitution to its normal working. In any case the Mayor is the most shortlived of municipal officers. If he declined to play the part of ornamental functionary, and aspired to real power, his tyranny would only last for a year. But we have shown such a tyranny to be unthinkable. Any member of a Council may control it by obtaining the confidence of his fellow-members. But the Mayor is as a rule too busy with his social duties to exert such an authority.

The case of Mr. Chamberlain at Birmingham is an exception which proves the rule. The administrative triumphs of his mayoralties show what can be done by a strong man in the prime of life, who combines popularity and influence with business capacity. Mr. Chamberlain was able to transform Birmingham not because he was Mayor, but because he was Mr. Chamberlain. As a rule Mayors are chosen not for their political colour or administrative ability, but for social status and wealth. A peer or a millionaire needs no other qualification. The neighbouring municipality will always be happy to decorate him with its gold chain of office. The nature of the office and the ordinary conception of it may be summarised in one sentence: A rich peer is an ideal Mayor.

CHAPTER IV

MUNICIPAL ELECTIONEERING AND MUNICIPAL POLITICS

HAVING now set out the legal principles which govern the qualifications and constitution of the Municipal Council, with its Mayor, Aldermen, and Councillors, we are at liberty to consider their practical effects. Like all constitutional enactments, the Municipal Code requires something more than a legal exposition in order to be fully understood; and accordingly it is our object to show how the sections cited in the foregoing chapter are converted into the realities of municipal life, or to put the matter more definitely, how municipal elections are actually "worked" in England.[1]

Municipal Elections and the party system.

The first observation to be made is that the conduct of municipal elections since the Reform of 1835 has come more and more under the operation of the party system. The two great parties of the State, which rule the Empire by turns, employ their residuary energies and exercise their organisations in municipal contests. One Reform Bill has followed another; Liberals and Conservatives have taken the place of Whigs and Tories. The aims and watchwords of party have changed. But party itself still runs its dividing line through public life, and splits it from top to bottom into two contending and competitive groups. Apathy and negligence born of two centuries of corruption had taken most of the life and party colour out of municipal contests, until popular interest

[1] Cf. for what follows Franqueville, vol. ii. chaps. xxviii. and xxxi.; Shaw, *Municipal Government in Great Britain*, pp. 38 *sqq.*; and the Royal Commission on the Amalgamation of London already referred to. But much of our information is of course derived from newspaper reports and personal inquiries.

was revived by the Municipal Corporations Act of 1835,[1] and again augmented in consequence of the widening of the Parliamentary franchise in towns by the Act of 1867, which led, as we have seen, very speedily to the development of a democratic organisation by each of the two great parties. The results of this reorganisation upon the municipal world were first felt in Birmingham and other industrial centres of the Midlands and the North, where the "caucus" system was inaugurated. But the convenience and economy of uniting municipal with political organisations for the work both of registration and of elections is so great that the party system now prevails in most towns of the kingdom. Candidates for the Town Council stand as Conservatives and Liberal Unionists or as Liberals and Radicals; and though Independents and Socialists are no doubt more common in municipal than in Parliamentary contests, even they not seldom receive secret or open support from the Liberal or Unionist organisation.

We have already observed that party differences do not in England extend over the whole field of national politics. On a large number of subjects there is tacit agreement. The ordinary work of administration and much of the year's legislative programme are non-controversial. This important consideration is still more applicable to municipal politics. When once the elections are over differences tend to disappear; and when important local interests are at stake the Council usually handles them on non-party lines. The Councillor forgets that he was a candidate. Even in the British Parliament, where party discipline is comparatively strict, cross

[1] In some places where the corporate offices remained open and the electing burgesses formed a majority of the inhabitants, the municipal elections were fought vigorously, even before 1835, on party lines. In Newark, for instance, the Reds and the Blues fought for the Town Council just as they fought for the election of representatives to Parliament.

In a letter, dated 1st November 1836, an election agent wrote from a Midland borough to its Conservative member:—

"To-day is our Town Council election. D. and C. have resigned, and our two friends M. and C. walk over that course. In the North Ward Mr. H. and P. stand in one interest, and we start B. against P., and *hope* to succeed. In the East Ward Mr. T. (surgeon) and Mr. S. (farmer) are supported by us against Dr. R. and G. Mr. T. is safe and G. will be thrown out, but the struggle between the other two will be a hard one, and I doubt we shall not be able to carry S. However, the average in the whole Town Council will leave us with the same majority we had before, and we shall try by annual fights to retain it."

voting is less rare than in continental assemblies. But what is a common exception in Parliament is almost a rule in Borough Councils. Important local business constantly arises upon which decisions are taken by the Councillors quite irrespective of party. Sometimes, of course, with a view perhaps to a coming election, a party vote is taken; and in some boroughs party feeling runs so high that party votes are fairly common. But on the whole, and as a general rule, the distinction between Liberals and Conservatives tends to disappear in the everyday work of a Municipal Council.

Again, in some great centres of industrial life, more especially during the last decade, there has been witnessed a new formation of parties on truly municipal lines. In consequence of the activity of Socialist organisations and other propagandist bodies, "municipal socialism" has been forced into the region of practical politics, and has even been made the line of cleavage in some municipal elections. Of these organisations the most interesting is, or was, the Fabian Society, founded in 1885. The Fabians soon made it clear that their central object was to popularise anti-capitalism and to counterwork the capitalist through the administrative machinery of the State. This is no place for a detailed history of the peculiar rôle of general without an army which this society has played in English politics, or of the influence which it has exercised upon the course of English socialism. Its local government work may be summarised under two heads. First, it has rallied backward and reactionary London to the standard of municipal socialism by educating the London County Council and helping that body to divide itself very much upon Fabian lines into Moderates and Progressives.[1] Indeed,

The Fabian Society.

[1] This nomenclature has been adopted in the provinces, though not widely, and in London there is a tendency among the Moderates to revert to the older name. At the London County Council election in the spring of 1901 the Moderate candidates, attracted by the result of the General Elections in the preceding autumn, generally styled themselves Unionist or Conservative, and endeavoured to identify themselves with the Conservative organisation. The Progressives, however, clung to their old title, retained their independence of Liberal organisations, and greatly increased their majority. There are, indeed, in the Liberal party leading men like Sir Henry Fowler who are distinctly opposed to the Progressive programme; and since Lord Rosebery retired the tie between the Progressives and the Liberals in London has somewhat relaxed.

it is not too much to say that the policy of the London County Council has been governed by the Progressive party ever since its creation in 1888, and that the Progressive party has itself been moulded and inspired by Mr. Sidney Webb, a most scientific and clever champion of municipal socialism in theory and practice, and foremost among the Fabian leaders. And this brings us to the second or theoretical part of the work of Fabianism. It stepped in to fill the gap left in 1886 by the secession of Mr. Chamberlain and his followers from the Liberal party. The Fabians took over the Radical programme and added to it a deliberate systematic policy of economic and municipal socialism. A minimum wage and a universal eight hours' day took the place of such cries as "three acres and a cow." Where a Radical would improve the community through the individual, a Fabian would seek to improve the individual through the community. It is a characteristic feature of Fabianism that it expects more from local authorities than from Parliament, and perhaps more from the Local Government Board than from either. It has endeavoured to show that many of its ideals can be obtained by local and imperial administration without the aid of Parliament. Much, says the Fabian, can be done if each local authority will act as a model employer and use all its powers to carry out our programme.[1]

Where, then, as in London, municipal parties are called "Progressive" and "Moderate," the former being inclined to favour municipal socialism and the latter inclined to oppose it, the division into parties represents a real division of opinion which operates in the deliberations of the Councillors as well as in their struggles at the polls, in the work as well as in the constitution of a local authority. On the other hand, where the elections are worked by the Liberal and Conservative organisations, and the two parties are so named, it cannot be said that the names imply any real or general division. "Tory Democracy" and the alliance of Mr. Chamberlain with

Progressives and Moderates.

[1] For the Fabian municipal programme see Fabian Tracts, 31-37. Mr. and Mrs. Webb, Mr. Bernard Shaw, and Mr. Graham Wallas have been prominent among those who have contributed by their pens and by their practical work on various London authorities to the exposition and realisation of Fabianism.

the Conservative party long ago deprived Liberalism of any claim to monopolise social policy. Mr. Chamberlain and his followers have driven Conservatism further upon the advanced lines sketched out by Disraeli and the Young Englanders. The "forward" Conservative school of thought is not merely theoretical or fanciful. It has undoubtedly made itself felt in Parliament by promoting such legislation as the Workmen's Compensation Acts;[1] and its influence is perhaps even stronger among the Conservative members of Borough (and we may add of County) Councils, who are often accused by anxious ratepayers of being "more radical than the Radicals." Moreover, in the old Liberal party moulded by Gladstone there still remains an element of monied men and capitalists, —extremists, it may be, of the *laissez-faire* school, who exercise an influence and weight in the counsels of the party in proportion rather to their subscriptions than to their numbers or ideas.

It may be said, then, that where municipal parties have been formed under the pressure of municipal socialism such parties are not connected with the older party divisions known to national politics. The Moderates, who are generally opposed to the extension of municipal undertakings, depend for their strength upon the rich landlords and capitalists, and all who dislike additions to the rates. They support monopolies and vested interests. The Progressives, on the other hand, draw their strength from the leaders of the Trade Unionists and from the more public-spirited members of the middle classes. Nevertheless this tendency to divide municipal parties upon strictly municipal lines seems to be passing away. London's example has been little followed; and even in London, as we have seen, the stream is now setting in the other direction. The existence of definite organisations with expert secretaries and agents, kept up at considerable cost by the two great parties of the State in every considerable town, is naturally an attraction to the local politician who wishes to enter public life as a borough Councillor.

There is another cause—different, yet closely connected. Nineteenth-century England had no labour party of a specifically political character, and the failure or unwillingness of

[1] 1897 and 1900.

the English workman to form such a party has not only had a decisive bearing upon the course of national politics during the nineteenth century, but it goes a long way to explain our difficulty and to account for the non-appearance of municipal parties unconnected with Liberal and Conservative organisations.[1]

Absence of a political Labour Party.

Since the extensions of the franchise in 1867 and 1885 the trade union organisations have at various times and in various places been able to control Parliamentary elections, and have used their influence sometimes on the Conservative, sometimes on the Liberal side, according as the one party or the other seemed most likely at the moment to forward the particular interests of organised labour. But more often they have abstained from exercising upon their members any official pressure.[2] Hence it has come about that the programmes of the Conservative and of the Liberal party have been equally influenced by the voice of Labour. Rivals for the favour of the masses, they try to outbid one another by the offer of social reforms and fiscal favours to those who eventually obtained the franchise in consequence of a similar race.[3] The result has been that the social policy, as well as the organisation and strategy, of the two historical parties has begun to converge.[4]

[1] Thus the avowed tactics of the Fabian Society were to "permeate" the Liberal party, *i.e.* to turn it into an instrument for the realisation of Fabian policy. This reminds us of Radical strategy in the first half of the century. The Radicals preferred to try to convert the Whigs by acting upon their left wing rather than to form a separate party organisation. Cf. Harris, *History of the English Radical Party*, p. 386 *sqq*.

[2] On the other hand, the Labour members in the House of Commons have, with one or two prominent exceptions (Independents or Socialists) been definitely and avowedly members of the Liberal party.

[3] "What was a conflict last year is a race now," said Lowe in 1867.

[4] The Unionist party has not been behind its opponents in readiness to alter the conditions of social and municipal life. This is partly the cause and partly the effect of its composition. In the Parliaments elected in 1895 and 1900 the great towns sent an overwhelming majority of Conservative or Liberal Unionist representatives to the House of Commons. Glasgow, Birmingham, Manchester, and Bradford, which are among the most advanced and enterprising municipalities of the United Kingdom, sent only one Liberal member to Parliament in the General Election of 1900 and only three in 1895. Out of the 59 London representatives, 50 Unionists were returned in 1895 and 51 in 1900. Meanwhile the Progressive party on the London County Council had secured an almost equally overwhelming majority. Cf. for the attitude of Conservatives in municipal politics an instructive article in the *Municipal Journal* (London), 1898, p. 103.

Indeed, broadly speaking, a tendency to pare down domestic controversies has of late years characterised domestic politics in England. The working of municipal socialism upon municipal politics constitutes only a small and exceptional chapter in the development of parties, for there too the widening of the franchise and the increasing influence of the trades union vote have made it impossible for any party to set itself in complete opposition to the masses and their interests. All serious candidates for local honours must occupy some ground in common, and the tendency has been for this common occupation to extend. Only because municipal socialism, as preached by the Fabians, was at first confused or identified in England with sharper and more theoretical doctrines of German coinage has it been at all possible to make this so-called municipal socialism a *principium divisionis* in municipal politics, and so, temporarily at any rate, to push the older parties into the background. Already these imported ideas have lost much of their original brightness. The eyes of Radical reformers have been opened by disappointments. The upper classes have learnt the wisdom of concession. Above all, the common sense of the country has helped to make a middle line between the two extremes, and to keep local administration on a steady course. In many cases the sharp antitheses of rival doctrinaires have already been levelled and smoothed away by practical administration. In London, as we have seen, special circumstances have created and preserved a controversy between Moderates and Progressives, which still serves as a dividing line in local elections throughout the Metropolis; for the attempt of the Moderates in 1901 to identify themselves with the Unionist party was not successful, many Liberal Unionists still preferring to give their support to the Progressive party. But in other leading towns the questions of principle involved in this struggle have been decided, hard doctrines have been softened, and municipal elections are simply a struggle between the two political parties for the control of the Town Council—in the phraseology of Liverpool, "to capture or to keep the Town Hall."

Weakness of doctrinaire Socialism.

Another consideration quite unconnected with municipal government as such has hitherto been barely noticed.

Municipal elections in English towns are conducted on political party lines, because they serve as a useful preliminary exercise, and as a test of the strength of parties in view of the Parliamentary elections. A Parliament may last for seven years, and in so long a period of inaction there would be danger of the party machine becoming rusty. Municipal elections are regarded as an invaluable device for keeping up the spirit and the efficiency of parties. But what is necessary to parties contributes also to the welfare of the State. All democratic countries require for efficiency of administration a strong and bracing atmosphere of public opinion. It is necessary that the public interests should be constantly watched and criticised from party standpoints. A condition of political disquiet, or at least of perpetual motion, is as necessary for the health of democracy as air to animal life. So far that plank of the Chartist programme which demanded annual parliaments has not been carried; but in the constitution of local authorities the principle of an annual appeal to the people has been liberally recognised. One of the consequences of this is that municipal — and as we shall presently see — other local elections are gradually being drawn more and more into the net of the political organiser.

Organisation of the two great parties.

To enter into any detailed investigation of the organisation of English parties would be beyond our purpose. Their present construction resembles a pyramid; for while they rest, or profess to rest, on a broad democratic basis, they narrow upwards, and are finally crowned by a very small circle of men, who quietly pull the wires, and exercise a great though unseen influence upon the party, especially in humdrum times. In towns like Birmingham and Liverpool, which approximate most closely to the caucus system of the United States, the control of the two political parties is almost as supreme over the organisation of municipal elections as over that of Parliamentary elections. This caucus system consists in a combination of democratic associations with a strong executive. Each ward usually has its association, each association its committee. The associations are federated. Their delegates meet yearly at a general meeting, and elect

a central committee of leaders for the whole town. The central committee appoints officers, paid and unpaid, to carry on the work of the party. Such is the ordinary form of both Conservative and Liberal organisations in the large towns.[1]

The more scrupulously democratic forms are observed in the constitution of a party executive, the more freely are large powers conferred upon it, and the more readily are its constituents disposed to trust to its discretion. The executive committee usually includes a chairman, a treasurer, and a secretary. These are the honorary officers. Under them will be a paid agent, with such sub-agents and clerks as the association may be able to afford. In London, of course, each party keeps up a central bureau with a highly paid secretary, a number of skilled agents and paid lecturers, a publication department, and whatever else ingenuity can suggest and the party purse buy.[2] The secret of successful party management lies in the right use of this instrument by the leaders. A man who wants to lead one of the two great parties into which the English people is divided must know, not only how to command and direct, but also how to discover the speed and gauge the depth of popular currents. It is mastery of political psychology—the psychology of the crowd—that makes a party leader in a democracy, and enables him to get a maximum of work with a minimum of friction out of the party machine.

This party system, which has made the election of Parliamentary representatives a battle between two great armies led by their own generals, and controlled in large questions by a central organisation and a central policy, leaves nevertheless to the local associations a perfectly free hand in dealing with questions of personal or purely local

[1] The Primrose League must not be identified with the Conservative and Liberal Unionist organisations. Founded to commemorate Lord Beaconsfield, it is primarily intended to interest women and make them useful in the work of the Tory party. It provides many local teas, dances, and entertainments; but it is not supposed to choose candidates, or to interfere with their choice; and the Primrose Dames do not usually concern themselves with local government.

[2] The paid officials of the bureau are under the control of the Chief Whip, who is expected to be loyal to the leader of the party.

interest. Here again we have an explanation of the part which is played by a party caucus at municipal elections. The organisation lends its aid without attempting to formulate the policy. A Schnadhorst or a Middleton would never dream of attempting to dictate a municipal programme in return for the aid afforded by the local agent of a party to candidates at a Town Council election. Nor, generally speaking, are the ward committees fettered in their choice of candidates by the Central Liberal or Conservative Association of a large town. In short, the organisation of municipal elections on party lines involves little or no interference with local wishes, as regards either men or measures. The democratic principle of local autonomy is scrupulously observed. The municipal elections may be likened to the yearly manœuvres of an army. They serve to attract recruits and subscriptions, as well as to exercise and improve the organisation. Many prominent politicians have learned here the elements of their craft. But it is equally true that in most large towns active assistance to one or other of the great political parties is the easiest if not the only entrance to the Town Council. Only in exceptional cases are independent candidates, or candidates unacknowledged by either of the two great parties, successful. Even in Bradford, which was one of the strongholds of the Independent Labour party in the years of its strength (1891-97), this rule has held good. In the six years mentioned, the Independent Labour party in Bradford ran thirty-six candidates for the Bradford Town Council. Twenty of these candidates fought three-cornered contests against both a Liberal and a Conservative candidate. But of these twenty only one was elected. The remaining sixteen fought "straight fights," seven against Conservatives, eight against Liberals; and of these sixteen eight were successful—"a fact," as one of the local newspapers once observed, "which tells more powerfully against independent action than any number of speeches and articles." It would indeed be difficult to find any great English town outside the Metropolis with a Municipal Council elected on other than party lines. In large centres of industry like Manchester, Liverpool, Leeds, and Birmingham, the caucus

The caucus in municipal elections.

Independent candidates.

system is particularly strong and active in municipal elections. However well a man may have served his town, he is liable to be turned out by his political opponents when at the end of his three years' term he seeks re-election. This indeed is admitted and deplored as an unfortunate incident of the party system; and such men can generally count on an Aldermanship, even when they belong to the minority, unless parties are very evenly divided. In fact, in some boroughs there is an understanding between the two parties, that the minority shall have its proportionate share of Aldermen.

It must not be supposed that the general body of the burgesses always share in the excitement, much less in the bitterness, of the rival candidates and caucuses. In the old days, before the introduction of the ballot and the establishment of a popular system of education, election riots were common, and in many places the declaration of the poll at municipal as well as Parliamentary contests was apt to be accompanied by stone-throwing and other acts of violence. There is probably more genuine interest (and far less rowdyism) now than ever before, and the proportion of uncontested as compared with contested elections is no doubt less than it used to be. But that proportion is considerable, and leads to the conclusion—which may likewise be inferred from the fact that the number of unpolled electors is almost invariably greater in municipal than in Parliamentary contests—that the burgesses do not believe in the distinction between Liberal and Conservative candidates for their Town Council. They regard the distinction as unreal. They know that the laws must be carried out whichever party is in power, and that the administration of the town will depend on the quality, and not on the political colour, of the Councillors.[1]

Popular interest in elections.

[1] In a year shortly after the Home Rule split, noticed by Shaw, no contests occurred in fifty boroughs, mostly, however, of small or middling size, though some were considerable places, such as Halifax, Rochester, Windsor, Colchester, Lincoln, and Reading. In Derby, and in three of the great ports—Newcastle, Plymouth, and Cardiff, only one ward was contested. In the municipal elections of November 1893, out of Birmingham's eighteen wards six were contested, in Leeds fifteen out of sixteen, in Bristol six out of sixteen, in Nottingham six out of sixteen, in Huddersfield three out of thirteen, in Liverpool twelve out of sixteen, and in Manchester seventeen out of twenty-five. Cf. Shaw, *Municipal Government*, pp. 48-51.

Hopeless candidatures are frowned upon not merely as frivolous and vexatious, but because the official costs have to be defrayed out of the borough fund to which all ratepayers without distinction of party contribute.

An influence so various and so changing as that of party upon municipal politics may seem to defy generalisation. Yet its investigation has brought one or two broad truths to light. In the first place, the hold of the parties upon municipal elections has strengthened in the last few decades. Second, the victorious party usually employs the aldermanic system to strengthen its own party, although in the choice of Aldermen long service and success in administration are—other things being equal—preferred. Again, as we have already noticed, labour organisations have not as a rule entered the municipal field. Their tactics here have been the same as in national politics. Since 1894 the Independent Labour party has indeed made considerable efforts to storm the council chambers of some of the larger boroughs, but with only slight success. There are working men and trades unionists in the Town Councils, as there are working men and trades unionists in Parliament.[1] But their number is still small, and grows very slowly. It generally happens, moreover, that members of trades unions are elected under the auspices of one or other of the political parties. Thus the City Council of Liverpool included in 1894 four trades unionists, three of whom were Conservative and one Liberal[2]—a typical example illustrating the unsubstantial and almost frivolous character of divisions, which exist, not to express any profound conflict of local opinion or programme, but simply and solely to maintain and stimulate party life and party organisation.

The working of the party system

In recognising the external act of voting for the Town Council as an incident of the standing conflict between the two political parties, we must again dwell upon the danger

[1] West Ham is the only municipal borough which has been governed for any length of time by a Socialist majority (cf. *Labour Annual* for 1900, p. 32).

[2] Mr. Clare, the Town Clerk, speaking of Liverpool municipal elections, in reply to a question put to him by the Royal Commission of 1894, said: "I think, with about two exceptions, a candidate would have little chance of receiving any votes unless he was either a Tory or a Liberal or an Irish Nationalist or connected with the Labour party."

of allowing our imagination to project this conflict into the council chamber and the committee rooms. Too much importance may easily be attached to the heated speeches of rival candidates. The elections over, party colour rapidly fades and absolutely disappears from the ordinary business of municipal administration. Nor does any idea of securing valuable patronage often enter into the calculations of party managers. The desire of power for its own sake is doubtless a strong motive; but the main object, as we have said, is to try the strength and, if possible, to demonstrate the superiority of the party. There is no idea of "capturing" the Government, as Lord Salisbury once advised the Church party to capture the schools. For according to the law and custom of municipal institutions in England, there has been since 1835 nothing to capture. A municipal spoils system in England is almost unthinkable. The whole structure of municipal government, with its permanent staff of officials, nominally dismissable at pleasure, but practically appointed for life, is opposed to any open abuse of the party system. The publicity which attends every act of administration, the criticism of the local press,[1] eager to improve its circulation by unearthing a scandal, all tend in the same direction. A sense of public duty and the desire to be respected and honoured by his fellow-citizens are the great motives which induce a man to enter public life in England, and having entered it, to guard against the suspicion of jobbery or corruption of any kind on his own behalf, or on that of his relatives and friends.[2]

And its influence on municipal administration.

[1] A good local newspaper, fearless and independent, is a great power for good. It was through the local press of Manchester in the autumn of 1900 that the elective auditor compelled the Manchester City Council to take up the case of Alderman Higginbotham, with the result that the Alderman, then on the point of being made Lord Mayor, was forced to resign.

[2] An important appointment, such as that of Town Clerk, often leads to a party conflict, and the majority commonly insists on appointing a man of its own colour. But Town Clerks are seldom men who have taken an active part in politics. Mr. Clare, the Town Clerk of Liverpool, never gave a political vote. See his Evidence before the Commission on the Amalgamation of London, p. 317. In his *Municipal Government in Great Britain* (p. 53 *sqq.*), Shaw contrasts the British with the American system, and shows how much more favourable is the former "to the selection and retention of capable and honest men." On American Municipalities, cf. Bryce's *American Commonwealth*, vol. i. p. 608 *sqq.*

Democracy and publicity together produce a sense of responsibility in the elected representatives of the town which makes them anxious to act, or at least to appear to act, in all public matters solely in the interests of the town and of the ratepayers whom they represent. Thus in the course of the nineteenth century there has grown up in English towns a practical understanding between influential people of all classes in favour of a pure and honest system of municipal administration. The consequence is that we are able at the beginning of the twentieth century to draw a picture of town government contrasting in every respect favourably with that which prevailed under the corrupt, slothful, unrepresentative corporations in the age preceding the reform of 1835. The contrast may well justify philosophers in the hope that the establishment of a ripe democracy will always lead to good and honest administration by a people that has trained and practised itself in the school of self-government.

That the ordinary work of administration is free from party influences, surprising as it seems, is too well attested to admit of doubt. The Town Clerks of Nottingham and Liverpool, in their evidence before the Royal Commission of 1894, were inclined to ascribe it partly to the action of the Aldermen, who were said to "give stability to the action of the Council"; Mr. Clare (the Town Clerk of Liverpool) also approved of the annual election of one-third of the Council, because "by having this annual election I find from experience that the most burning questions in connection with the administration of the town are discussed prior to the November elections, and I think that is very beneficial." These "burning questions" are questions of policy which create differences of opinion, such as whether a lease of tramways to a company should be renewed, or whether some municipal service or other should be undertaken. The party in power takes one view, and the other party naturally opposes them. Divisions also arise through a conflict of interest. A capitalist, or a group of capitalists, or a trades union, may have a party in the Council which will befriend them in case they are injured by the action of one of the Council's Committees. Often financial questions arise in the course of an election campaign. Is there to be an increase

in the rates, or shall there not rather be a reduction of expenditure? Shall the Corporation make a profit on its tramways in relief of rates, or shall it reduce the fares? Sometimes these questions are debated on purely party lines, and decided by the result of the elections. Often they are allowed by the party managers to remain open questions, and a candidate may then adopt whatever line he chooses.

The governing classes.

This chapter must not conclude without a word upon a certain trait or characteristic of popular government in England which intimately concerns the constitution and work of Town Councils. The gradual substitution of a democratic for a privileged franchise has not done away with the governing classes. The English nation is still led by Society, and if religious qualifications have been almost swept away and the advantages of birth reduced, the superiority conferred by wealth and education has rather increased than diminished. In the national and municipal Parliament alike a man of very moderate ability, who combines a heavy purse with a fluent tongue, is looked up to as one naturally entitled to share in the councils and leadership of a party. The Municipal Corporations Act of 1835 put an end for ever to a corrupt system which rested largely on the patronage exercised over boroughs by the landed nobility, and set up instead representative governments responsible to the middle classes. But men of rank or wealth who chose to throw themselves into the new work, and to accept the spirit as well as the letter of the new law, were eagerly requisitioned and welcomed; and when the franchise was extended lower and lower down the social scale, until it practically embraced the whole community, and gave the working classes a potential control over municipal as well as Parliamentary elections, democracy was not found to have deprived the upper classes of political leadership. It is true that in most of the large towns individual workmen are elected to serve on the Borough Council, but it is difficult, as we have said, to point to a single important case (West Ham excepted) in which municipal administration is controlled by representatives who are themselves working men. The chief reason is that only a very small section of the working population of the

United Kingdom regards itself as a distinct and isolated class with separate economic and political interests. British workmen are inclined to jealousy and suspicion. They do not always care to see their fellows in positions of authority. They know, and perhaps exaggerate, the temptations to which a man of small and precarious income, placed in a commanding position, is necessarily subject; and workmen are well disposed to accept the advances made to them by men of wealth, leisure, and education, who are often ready enough to sink the interests of their particular "set" in those of the community, and often to devote all their energies to the promotion of the well-being of the poor. At any rate, be the cause what it may, the British workman does not as a rule regard himself as a member of an isolated class, and has no particular predilection in favour of candidates of his own station at either municipal or national elections. Nor has he any reason to be dissatisfied with the results of his attitude so far as the municipal councils are concerned. Not only are the most efficient members of his class left free to devote their spare energies to the management of trade unions, co-operative societies, benefit clubs, and similar organisations, but the work of the Municipal Councils has been directed to an ever-increasing extent towards improving the moral and material happiness of those least able and least successful in the struggle for being and for well-being.

CHAPTER V

THE LAW OF MUNICIPAL ELECTIONS

BEFORE describing the Town Council, it is necessary to complete our account of municipal elections by a summary of the legal provisions under which they are held.

I. *The Burgess-Roll*

First, then, of the preparation of the lists of electors.[1] Ever since 1835, when the whole system of municipal government was reconstructed and entrusted to the general body of burgesses, the necessity of providing a true and authentic expression of their will has been fully recognised in England, and has led to the enactment of an elaborate and complicated series of electoral laws. The absence of administrative control or supervision over elections by any central department of government has accentuated the necessity for securing the vote, that most important of all the acts of citizenship, by every kind of legal safeguard. In this, as in all the departments of English local government, no pains have been spared

[1] The law of the subject is mostly contained in Part III. of the Municipal Corporations Act 1882, secs. 44-49, Parliamentary and Municipal Registration Act 1878, and County Electors Act 1888. But there are no less than thirty-four Acts in force which bear upon the preparation of the burgess lists. It is one of the most minute and detailed branches of English public law. But the outlines are simple and clear. 1. The registers of parliamentary and municipal voters are revised jointly once a year. 2. The lists are prepared not by the Town Council or one of its organs, but by the Overseers, who are historically a distinct and independent authority. 3. Both lists are finally revised and sanctioned by a qualified official in a court open to the public.

Cf. what has already been said on this subject in Book II., Part I., chap. ii., pp. 245-249.

to elaborate and improve the indispensable conditions of a pure and effective democracy. There is a close and unmistakable connection between the provisions for municipal elections and those which have been gradually constructed by the Legislature for parliamentary purposes, for English statesmanship has always understood that in both cases the problem is the same—namely, how to actualise self-government by giving the people perfect freedom in the choice of their representatives. Accordingly, the connection which we have already traced between local bodies and Parliament in regard to the widening of the suffrage has been equally marked in the development of the machinery and procedure of elections. The preparation of lists of voters is now practically a single operation both for parliamentary and municipal purposes. The Parliamentary and Municipal Registration Act 1878, in conjunction with the Parliamentary Registration Act 1843 and a number of amending statutes, provides for making the lists of parliamentary electors and municipal burgesses simultaneously. Our present task is to describe summarily the present state of the law. First, then, as regards the preparation of the register of municipal voters.[1] The work of preparation may be said to begin in April, for on some day during the week ending 15th April a Town Clerk must send precepts, notices, and instructions to the Overseers in respect of the new lists. On the 10th of June he issues his precept to the Overseers to make out the lists of parliamentary and other voters. On the 20th of the same month it is the duty of Overseers to affix to church doors or other convenient places notices to persons entitled to vote, calling upon them to make claims before 25th August. Between the 1st and 20th of June the Overseers should also give notice to voters who have not paid their poor rates and assessed taxes up to 5th January to do so. Those who neglect to do so before 20th July are disqualified and struck off the lists along with those whose names have been sent in by the Relieving Officer as having been in receipt of poor relief. By the beginning of August the lists must be ready, and must be affixed to church doors during the first two Sundays of the month. During the whole of August rate-books may be inspected by voters and claimants; but the

Preparation of voters' lists.

[1] Cf. also pp. 245-249.

25th of August is the last day for claims and objections. Accordingly, on that day Overseers make up their lists of electors' claims and objections [1] in the prescribed form and forward them to the Town Clerk, whose duty it is to lay them before the Revising Barrister. The Courts of Revising Barristers must be held at some time or other between 8th September and 12th October, and notice given beforehand of the exact date at which each court will be held.

The Revising Barrister.

Revising Barristers (whose number for England and Wales was fixed at 97 by an Order in Council of the year 1896) are barristers of not less than seven years' standing. Members of Parliament and persons holding offices or places of profit under the Crown are disqualified.[2] Revising Barristers are appointed annually by the Senior Judge of Assize for the county who has actually travelled the summer circuit, or part of it. Each Revising Barrister has his district in which he must hold open Courts of Revision, his "circuit" [3] beginning, as we have said, on or after 8th September, and ending on or before 12th October. The Courts of Revision are held by the Revising Barrister (*a*) at every polling-place for the county in his district; (*b*) at other places in his district which he may deem expedient; and (*c*) at any town near a polling district which may be prescribed by the Local Authority having power to assign polling-places in the county.[4] His court opened, the duty of the Revising Barrister is to examine the various lists of voters, to strike out the names of those who are proved to his satisfaction to be dead or disqualified, and to add the names of those who are proved to be qualified. Persons examined must be examined on oath.

[1] In order that electors may be duly warned, "objections" are affixed to church doors on the first two Sundays of September.

[2] Curiously enough, the office of Recorder of any city or borough is expressly excepted. (See M.C.A. 1882, sec. 163).

[3] The remuneration of a Revising Barrister for his annual circuit is 250 guineas (to include travelling and other expenses), which is paid to him by order of the Treasury after the termination of his last sitting. For further information see 37 and 38 Vict. c. 53, sec. 1, and the Parliamentary Registration Act 1843. A comprehensive account of the functions of the Revising Barrister will be found in the *Encyclopædia of the Laws of England* (edited by Mr. Wood Renton).

[4] The County Council, by the Local Government Act 1888, sec. 3 (XII.); cf. sec. 34 (6). Previously the power belonged to Quarter Sessions.

Those who appear before the Court must appear in person or by agent (solicitor), but not by counsel (barrister).[1] The business is got through very rapidly, because in practice the claims and objections are usually made by the party agents or by solicitors acquainted with the law. The Revising Barrister must decide claims and objections in accordance with the rules of proof laid down in the ruling statutes. On questions of fact his decision is final. But if a point of law is involved, an aggrieved person may give notice before the rising of the Court that he desires to appeal. The appeal is to the King's Bench Division, stated in the form of a special case and signed by the Revising Barrister. If the Revising Barrister refuse or neglect to do so, the aggrieved person may apply to the High Court for a rule calling upon him to show cause why an order should not be made directing the appeal to be entertained.[2]

When the lists have been gone through and all claims and objections decided at all the courts on his circuit, the work of the Revising Barrister ends with the delivery of the revised lists to the Town Clerk or to the clerk of the County Council on 12th October. The lists are printed, and a printed copy, examined by the Town Clerk and signed by him, becomes the burgess-roll of the borough. The burgess-roll must be ready and completed on or before 20th October, in order that it may come into operation on the 1st of November, when the municipal elections are held.[3] The registers of Parliamentary electors do not come into force until 1st January.

II. *The Procedure at Municipal Elections*

From the preparation of the lists we pass to the procedure at elections. Where the town is divided into wards the burgess-roll is made in separate rolls, called ward-rolls—one for each ward; and the ward-rolls collectively constitute the

[1] Cf. O'Connor *v.* Nicholson (1891), 1 Fox and S. 250. In certain cases names should be expunged from the list whether they are objected to or not.

[2] See Parliamentary and Municipal Registration Act 1878, secs. 37, 38. For an instance of a case in which special leave was given to appeal from the Queen's Bench Division to the Court of Appeal, cf. Clutterbuck v. Taylor, 1896, 1 Q.B. 395.

[3] See M.C.A. 1882, sec. 45. The burgess-roll continues in operation for the twelve months beginning on 1st November.

burgess-roll. A burgess can only be enrolled in one ward, and can only vote in one ward [1]—a very democratic provision, in marked contrast to the formidable system of plural voting which still prevails at Parliamentary elections. In the smaller boroughs, which are not divided into wards, a third of the Councillors are annually elected by the whole body of burgesses enrolled in one general list.[2] In large towns the wards themselves, and consequently the ward-rolls, are often subdivided into polling districts.

At an election of Councillors for a whole borough the Mayor is the returning officer, and at a ward election the returning officer is an Alderman assigned for that purpose by the Council [3] at the statutory meeting on 9th November. "Nine days at least before the day for the election of a Councillor the Town Clerk shall prepare and sign a notice thereof, and publish it by fixing it on the Town Hall, and, in the case of a ward election, in some conspicuous place in the ward." [4]

The law of nomination.

In a municipal as in a parliamentary election two stages are distinguishable—the nomination and the poll. Nomination is indispensable for any person who wishes to stand as candidate for a Town Council; and a nomination is no nomination unless it is "valid," *i.e.* conducted in accordance with the rules scheduled in the Municipal Corporations Act of 1882.[5] Briefly stated, the rules for nomination amount to this: the nomination

[1] M.C.A. 1882, sec. 45 (6), and sec. 51 (2). Under M.C.A. 1835, sec. 44, a burgess, though he might only give one vote, might be enrolled in respect of distinct premises in two or more wards, and might choose the ward in which he should give his vote.

[2] M.C.A. 1882, sec. 45 (4).

[3] See M.C.A. 1882, sec. 53. If the Mayor or Alderman is disqualified or unable to serve, section 67 applies.

[4] M.C.A. sec. 54. At common law the door of the parish church is the proper "conspicuous place" for affixing notices which it is required to publish and make known.

[5] In Part II. of the third schedule; see secs. 55 and 56 of the Act. There is, however, an important distinction between the provisions contained in the body of the Act and the rules scheduled. For by section 72, "an election shall not be invalidated by non-compliance with the rules in the third schedule, or mistake in the use of the forms in the eighth schedule, if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act" (cf. sec. 241).

paper of a candidate for the office of a Councillor must be in writing and must be signed by a proposer and seconder and eight others, all burgesses of the borough or ward; the paper must give the candidate's name in full, his place of residence, and other information ("description"); every nomination paper must be delivered by the candidate, his proposer, or seconder, at the Town Clerk's office, seven days at least before the day of election, and before five o'clock in the afternoon of the last day; on the following day the Mayor must give his decision in writing as to the validity of the nomination; if an objection is made, and the Mayor disallows it, his decision may not be disputed; "but if he allows the objection his decision is subject to review upon an election petition." So Lord Herschell, in a case which came before the House of Lords in 1888. Lord Herschell added—

> Now, those provisions (in the Third Schedule of the Municipal Corporations Act 1882) appear to me to indicate that it could not have been intended that the Mayor should entertain such a question as the qualification of a candidate; because it is impossible to suppose that a question of that sort should—on, it may be, very imperfect information and without legal assistance—be finally and conclusively determined by the Mayor. But when the Mayor has once investigated the objections arising to any nomination paper, and upheld its validity, then the candidate is validly nominated.[1]

It should be added that by the tenth rule of Schedule III., Part II., the signature of a burgess who signs more nomination papers than one is inoperative in all but the one first delivered. At least four days before the election the lists of candidates validly nominated, with their abodes, descriptions, proposers, and seconders, must be printed and fixed on the Town Hall, and, where the borough is divided into wards, in some conspicuous place in the ward. Finally (by rule 17), where the number of valid nominations exceeds that of the vacancies, "any candidate may withdraw from his candidature by notice signed by him and delivered at the Town Clerk's office not later than two o'clock in the afternoon on the day next after the last day for delivery of nomination papers."

After nomination—election. Whether there will be a poll or not depends on the ratio between the number of candidates and the number of vacant seats. There are three possible cases.

[1] See Pritchard *v.* Mayor of Bangor; 13 Appeal Cases, at p. 257.

1. The candidates may be exactly equal in number to the vacant seats, or
2. They may be more, or
3. They may be less.

Only in the second contingency does a poll take place.

In the first case no voting at all is necessary, and all the nominated candidates are, in the words of the Act, "deemed to be elected." The Returning Officer declares the candidates elected, and publishes the result not later than eleven o'clock upon the 1st of November, or, in the case of a by-election, on the day fixed for the polling. Nor is a poll required in the third case, for the candidates who have been nominated are deemed to be elected, since there has been no contest. The seats which are still left vacant are filled by those retiring Town Councillors who previously received the largest number of votes. If, however, the previous poll was equal, or the retiring Councillors were also elected without a contest, then it falls to the Mayor, at his own pleasure and discretion, to select the necessary number of retiring Councillors; and those he selects are "deemed to be re-elected." [1]

The law of polling.

In the second and remaining case a poll is necessary, and for the mode of conducting it we must refer again to the principal Act (M.C.A. 1882).

Sec. 58 (1).—If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is, by the Ballot Act 1872, directed to be conducted; and subject to the modifications expressed in Part III. of the Third Schedule, and to the other provisions of this Act, the provisions of the Ballot Act 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

Without entering at length into the minute and complicated details of the Ballot Act of 1872, which substituted secret for open voting at English elections, or into the modifications [2] with which it is applied to municipal elections, we shall attempt to describe briefly those main provisions

[1] See M.C.A. sec. 56.

[2] See M.C.A. 1882, Schedule III., Part III. A curious modification of the Parliamentary provisions of the Ballot Act is also contained in the body of the M.C.A. 1882, sec. 58 (6), with regard to the appointment of agents. Cf. Ballot Act, 1872, sec. 20 (6), which is practically repealed.

which were intended to guard votes against the possibility of detection, *i.e.* to secure the secrecy of the ballot; and at municipal elections the Returning Officer, as we have seen, is "the Mayor or other officer who, under the law relating to municipal elections, presides at such elections";[1] and it is his duty to see that the various provisions for this purpose are properly carried out. The Mayor then has to set in motion the machinery of municipal elections. Four days before he must give public notice of the situation, division, and allotment of polling stations. He must appoint officers to take the poll and count the votes. He must see that every polling station is provided "with such number of compartments in which the voters can mark their votes screened from observation" as may in his judgment be "necessary for effectually taking the poll."[2] It is his business also to see that a sufficient number of ballot papers (with the names of all candidates printed in the proper form) are provided. The voter attaches a cross to the name of the candidate or candidates for whom he wishes to vote.[3] Illiterate voters affix their marks in the presence of representatives of the candidates. The illiterate voters must be entered in the burgess lists with a note of explanation in each case. It should be observed that once on the burgess-roll a person is entitled to vote during the year in which that roll is in force. The following provision, which explains itself, illustrates English jealousy of any official interference with the voter:—

(1) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions or either of them:—

(*a*) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough [*or* ward] as follows [*read the whole entry from the roll*]?

(*b*) Have you already voted at the present election [*add, in case of an election for several wards*, in this or any other ward]?

(2) The vote of a person required to answer either of these questions shall not be received until he has answered it.

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[1] Ballot Act 1872, sec. 20 (1).

[2] See M.C.A. 1882. Part III. of the third schedule, rule 4.

[3] "Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies."—M.C.A. sec. 58 (2).

(3) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4) Save as by this Act authorised, no inquiry shall be permitted at an election as to the right of any person to vote.[1]

Many more precise and searching provisions exist for the purpose of securing the voter against interference or intimidation. The Presiding Officer and his assistants, the candidates (if they take an active part), or their agents, are required to take an oath before a Justice of the Peace not to disclose any vote of which they may become aware. Heavy penalties are enacted against falsification of votes or personation of voters. Any person convicted of forging, or of fraudulently defacing, or fraudulently destroying, nomination papers, is guilty of a misdemeanour, and may be imprisoned for any term not exceeding six months with or without hard labour.[2] A Mayor or Alderman who neglects, or refuses, to conduct or declare an election as required by the Act, is liable to a fine not exceeding a hundred pounds.[3] Similarly, Overseers and Town Clerks who neglect or refuse to perform their duties in connection with the making, publishing, and inspection of the parish burgess list, and lists of claimants and respondents, are liable to a fine not exceeding fifty pounds.[4] If the plaintiff is successful, he is to be paid half of the fine after payment of the costs of the action.

Polling hours are regulated by a special Act—Election (Hours of Poll) Act 1885, by which, at all Parliamentary and municipal elections, "the poll (if any) shall commence at eight o'clock in the forenoon, and be kept open till eight o'clock in the afternoon of the same day, and no longer." The poll may, however, be closed earlier if an hour has passed without any vote having been tendered, provided that no violent or illegal means have been employed to prevent the exercise of the franchise.[5] If after the counting some candidates are found to have received an equal number of votes, and the addition of a vote would entitle any of those candidates to be duly elected, "the

After the poll.

[1] M.C.A. 1882, sec. 59 ; cf. M.C.A. 1835, sec. 34.

[2] M.C.A. 1882, sec. 74. [3] M.C.A. 1882, sec. 75 (1).

[4] M.C.A. 1882, sec. 75 (2). An action for a fine under this section must be brought within three months of the neglect or refusal.

[5] See M.C.A. sec. 58 (4).

Returning Officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing."[1] The votes should be counted and scrutinised, and public notice given of the result by the Returning Officer with as little delay as possible.[2] After the declaration of the poll all voting papers should be delivered to the Town Clerk. Should a candidate be declared elected in two wards, he must give notice in writing within three days which ward he chooses to represent; otherwise the Mayor will decide.

This completes our account of the procedure at the election of Councillors. Its most marked feature—apart from the guarantees it offers for secrecy of the ballot—is the anxious forethought displayed by the Legislature to avoid unnecessary elections, with all the cost and trouble which are involved by the minute regulations of the Ballot Acts.

It remains to summarise the special rules which govern the election of Aldermen, of Mayor, and of Auditors. The ordinary day for the election of Aldermen is 9th November, and the election is held at the quarterly meeting of the Council. The new Aldermen are elected by the whole body of Councillors and Aldermen, with the exception of the outgoing Aldermen, who may not vote.[3] Every person, Councillor or Alderman, entitled to vote may vote for any number of new Aldermen, not exceeding the number of vacancies, by signing and personally delivering to the chairman at the meeting a voting paper containing the surnames and other names, and places of abode and descriptions, of the persons for whom he votes. The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the Town Clerk to be kept for twelve months. In case of equality of votes, the chairman, although as an outgoing Alderman or otherwise not entitled to vote in the first instance, shall have the casting vote. The persons, not exceeding the number of vacancies, who have the greatest

The election of Aldermen, Mayor, and Auditors.

[1] M.C.A., sec. 58 (5).

[2] See rule 44, Part I. of the first schedule to the Ballot Act 1872.

[3] An outgoing Alderman who has just been elected Mayor may not vote. See Hounsell *v.* Suttill, 19 Q.B.D. 498.

number of votes shall be declared by the chairman to be, and thereupon shall be, elected Aldermen.

The election of Mayor precedes that of Aldermen, being the first business transacted at the quarterly meeting of November. It is also the last business over which the old Mayor, if present, presides. Here too the chairman, though not entitled to vote in the first instance, has the casting vote.[1]

Of the three borough Auditors[2] two are elective, the third (the Mayor's Auditor) being a member of the Council appointed by the Mayor. The two Elective Auditors (who must be qualified for, without holding, the office of Councillor or Alderman) are elected annually on the first of March, "or such other day as the Council with the approval of the Local Government Board from time to time appoint.[3] Until the office of Revising Assessor was abolished by the County Electors Act of 1888, it was customary to combine the election of Revising Assessors and Elective Auditors. Now, however, this complication, and the sub-section governing it, is no longer necessary, and the provisions of the Act, already explained, with respect to the nomination and election of Councillors apply to the nomination and election of Elective Auditors, except that electors may only give one vote for one candidate, and that the election is to be held "at the town hall, or some other convenient place appointed by the Mayor."[4]

The chronology of elections.

Lastly, as to the dates of municipal elections. Both ordinary elections and extraordinary ones (by-elections arising out of casual vacancies) are provided for by the Act of 1882. In the first case, as we have seen, the dates are fixed by the statute itself. In the second case, where a casual vacancy has occurred in a corporate office, "the election shall be held within fourteen days after notice in writing of the vacancy has been given to the Mayor or Town Clerk by two burgesses." If the vacant office is that of Mayor, the Town Clerk notifies the day of election, otherwise it is fixed by the Mayor.[5] The Legislature has also provided for the possibility of a

[1] The election of Mayor is governed by sec. 61 of the M.C.A. 1882—that of Aldermen by sec. 60.

[2] M.C.A. 1882, sec. 25.

[3] M.C.A. 1882, sec. 62 (1).

[4] M.C.A. 1882, sec. 62.

[5] M.C.A. 1882, sec. 66.

municipal election not being held at the appointed time, and the section which has been framed to meet this emergency is so interesting from the standpoint of constitutional law, that it must be cited as it stands:—

(1) If a municipal election is not held on the appointed day, or within the appointed time, it may be held on the day next after that day or the expiration of that time.

(2) If a municipal election is not held on the appointed day, or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from electing; but the High Court may, on motion, grant a *mandamus* for the election to be held on a day appointed by the Court.

(3) Thereupon public notice of the election shall, by such person as the Court directs, be fixed on the town hall, and shall be kept so fixed for at least six days before the day appointed for the election; and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.[1]

An election is not to be postponed on account of delay in making a parish burgess list or the burgess-roll. If they are not ready in due time the old list, or the old roll, remains in force.[2]

Nor should the absence or death of the Mayor or Returning Officer lead to the postponement of elections. In the first case, it is the duty of the Council to choose forthwith an Alderman to execute the powers and duties of the Mayor in regard to elections. If, however, the Alderman assigned to be Returning Officer at a ward election is ill, absent, or unable to act, then the Mayor "may appoint to act in his stead another Alderman, or if the number of Aldermen does not exceed the number of wards, a Councillor not being a Councillor for that ward, and not being enrolled in the ward-roll for that ward."

III. *Corrupt Practices at Municipal Elections*[3]

After a lapse of twelve months no vote cast at a municipal election can be questioned; but during that period any vote

[1] M.C.A. 1882, sec. 70. [2] M.C.A. 1882, sec. 71.

[3] The most important statutes considered in the following pages are the M.C.A. 1882, Part IV. secs. 77-104, and the Municipal Elections (Corrupt and Illegal Practices) Act 1884 (47 and 48 Vict. c. 70), by which some of the sections in Part IV. of the M.C.A. 1882 are at once repealed, and in substance re-enacted.

can be questioned by proceedings undertaken in the manner prescribed, and according to the rules laid down by Acts of Parliament. The law of corrupt practices, like the law of procedure at elections, is practically the same for municipal as for Parliamentary purposes, the statutory provisions relating to the latter having been applied to the former with such small modifications and variations as were made necessary by the difference in subject-matter. In the following pages we have endeavoured to state succinctly the main outlines only of a branch of law which has been built up with extraordinary completeness, and drawn out with all the detail of casuistry by the legislators of modern England.

The law of corrupt practices.

The law contemplates and defines two species of electoral corruption: one under the term "corrupt practices," the other under the term "illegal practices." The more important forms of corrupt practice fall under four heads—Bribery, Personation, Treating, and Undue Influence. These four offences "include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a Parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to Parliamentary elections."[1]

Bribery is the gift or offer of money, or other valuable consideration, to any voter, or other person to induce a voter to vote, or refrain from voting; and all who take part either in giving or receiving the bribe are guilty of the offence and liable to the penalty. Persons who corruptly pay any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote, are guilty of bribery, and likewise of course the ratepayer "on whose behalf and with whose privity" any such payment is made.[2]

Bribery.

[1] M.C.A. 1882, sec. 77. The Acts "for the time being in force" are the Corrupt Practices Prevention Acts 1854, 1863, and 1883, the Representation of the People Act 1867, and the Ballot Act 1872; and these Acts contain the definitions of the four offences included in the term "corrupt practices." These definitions, summarised above, will be found in Part I. of the Third Schedule to the Municipal Elections, Corrupt and Illegal Practices Act 1884.

[2] See Representation of the People Act 1867, sec. 49.

The offence of personation consists in applying for a ballot paper in the name of some other person, alive, dead, or fictitious.[1] To "treat" is corruptly to give, provide, or pay wholly or in part for providing, "any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election." The offence of "treating" includes the person who corruptly allows himself to be treated.[2]

Personation and treating.

"Undue influence" is a conception difficult to define, but an attempt is made in the Corrupt and Illegal Practices Prevention Act 1883, the second section of which runs as follows:—

> Every person who, directly or indirectly, by himself, or any other person on his behalf, in order to induce or compel another person to vote, or refrain from voting, or on account of another person having voted or refrained from voting, either (1) uses or threatens to use any force, violence, or restraint, or (2) inflicts, or threatens to inflict by himself, or by any other person, any temporal or spiritual injury, damages, harm, or loss.

And the offence is equally committed by every person who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon any elector to give or refrain from giving his vote.

So much for corrupt practices.[3] The Act of 1884, after defining certain payments and contracts as illegal practices,

[1] Defined in the Ballot Act 1872, sec. 24.

[2] See the Corrupt and Illegal Practices Prevention Act 1883, sec. 1.

[3] As an illustration of the light-hearted way in which politics have been treated at municipal elections, the following story may be told:—"In one of the manufacturing towns of the West Riding, a short time before the passing of the Ballot Act, the Liberal party put up two strong and popular candidates for a Conservative ward. When the contest had lasted a few days, it seemed certain that one of them at any rate would be elected to the Town Council. On the strength of this probability, a prominent Conservative in the town (who shall be named Smith) betted heavily, and so became deeply interested in the victory of one of the Liberal candidates. The polling day came. As it was open voting, the state of the poll was announced hour by hour, and early in the afternoon both the Conservative candidates enjoyed a good lead. Smith went into the slums, spent money freely on men and vehicles, and brought up Liberal voters so fast that when the poll closed he had won his bet."—[F. W. H.]

goes on to limit the amount of expenditure which may legally be incurred by a candidate. Within twenty-eight days after a municipal election every candidate must transmit to the Town Clerk a return of his election expenses[1] vouched by bills and receipts, and accompanied by the statutory declaration made before a Justice. These expenses must in no case exceed the sum of £25, unless the constituency contains more than 500 voters, when threepence a head extra is allowed for every additional voter.[2] This sum, however, does not include payment of the two "clerks or messengers" permitted by law to be employed in each borough or ward,[3] or of the one polling agent who may be employed in each polling station, or for the hire of committee rooms. Until he has made such return and declaration an elected candidate may not sit or vote in the Council. If he does, he forfeits "fifty pounds for every day on which he sits and votes to any person who sues for the same." Failure to make the said return and declaration only constitutes "an illegal practice"; but if a candidate "knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury," and the offence is also deemed to be "a corrupt practice" within the meaning of the Municipal Elections Act of 1884.

Candidates and expenditure.

The political consequences to a candidate of committing a corrupt practice are very severe. For if he or his agent (acting with the candidate's knowledge and consent) is convicted of a corrupt practice, he is incapacitated for life from either voting or holding any municipal office.

We now pass on to the second group of less serious offences called "illegal practices." These consist of a number of payments and contracts for various election purposes defined

[1] The Municipal Elections (Corrupt and Illegal Practices) Act 1884, sec. 21. For a form of the "declaration" to be made and signed by each candidate, see the Fourth Schedule of the Act.

[2] The Municipal Elections (Corrupt and Illegal Practices) Act 1884, sec. 5 (1).

[3] If the number of electors in such borough or ward exceeds 2000, one additional person may be employed for every additional thousand, or fraction of a thousand. These employees may not vote.

in the Act and stamped as illegal. The parties to such payments or contracts are, however, only guilty of the offence of an illegal practice if they have acted knowingly in contravention of the Act. Payments for the conveyance of electors either by railway or by hired vehicle, payments to electors for exhibiting election literature, and payments for committee rooms in excess of the number allowed by the Act,—all these are illegal practices. To publish election literature without the name of the printer and publisher is also an illegal practice. Illegal practices at municipal elections are punishable by a court of summary jurisdiction, and a person found guilty of an illegal practice is liable to a fine not exceeding £100, and is made incapable for five years of being registered as an elector or voting at elections within the borough in which the illegal practice was committed.[1]

Illegal practices.

Lastly, an illegal practice is deemed to be an offence against Part IV.[2] of the Municipal Corporations Act 1882, and a petition alleging such illegal practice may be presented and tried accordingly. In other words, an illegal practice is a sufficient ground for the commencement of proceedings to upset and reverse the result of an election. Not that a conviction for illegal practices need render an election null and void. The Election Court has to determine whether the irregularities which occurred were likely to have affected the result of the poll. If at an election petition a charge is made of any illegal practice having been committed, it is the duty of the Election Court to report to the High Court; and if this report declares that a candidate has been guilty of an illegal practice, "the candidate

Election petitions.

[1] For illegal practices see the Municipal Elections (Corrupt and Illegal Practices) Act 1884, secs. 4-8. The Act goes on very clumsily to distinguish and mark off certain other payments contrary to the Act (including payments for bands of music, banners, cockades, etc.), and certain employments and hirings, as not "illegal practices," but "illegal payments," "illegal employments," and "illegal hirings" (see secs. 9, 10, 11, 12, 16). By sec. 17 (1) a person guilty of either of these three offences is liable to a fine not exceeding £100, and an unnecessary distinction is almost whittled away by sec. 17 (2), which declares that "where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice."

[2] Entitled "Corrupt Practices and Election Petitions," secs. 77-104.

shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which, if elected, he might have served; and if he was elected his election shall be void; and if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice."[1] Similarly, if it is found by an Election Court[2] "that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate," a much heavier penalty is provided. The guilty candidate "shall not be capable of ever holding a corporate office" in the borough. If elected, his election shall be void, and he is subjected to the same incapacities as if at the date of the report he had been convicted of a corrupt practice. If the corrupt practice has been committed not by the candidate but by his agent, the incapacity for life is reduced to incapacity for three years.[3]

Every person guilty of a corrupt or illegal practice (including illegal employment, payment, or hiring) at a municipal election is prohibited from voting at such an election; if he votes his vote is void and is to be struck off on a scrutiny. It is the duty of the Town Clerk to make out annually in July "the Corrupt and Illegal Practices List of Voters," containing the names of all persons disqualified from voting by the report of an Election Court or by conviction of corrupt or illegal practices. The list is published every year by the Overseers, and the names there printed are omitted from the parish burgess lists. This "black list" is revised like the other lists, and persons included in it may claim to be omitted. When revised it is appended to the burgess-roll and must be printed and published therewith.[4]

[1] Municipal Elections (Corrupt and Illegal Practices) Act 1884, sec. 8.

[2] Made pursuant to sec. 93 of the M.C.A. 1882.

[3] Municipal Elections (Corrupt and Illegal Practices) Act 1884, sec. 3.

[4] See Municipal Elections (Corrupt and Illegal Practices) Act 1884, secs. 22, 24.

The result, then, of a municipal election may be questioned by petition on various grounds, such as (1) that corrupt or illegal practices have been committed, or (2) that the elected candidate was ineligible for election, or (3) that he did not really obtain a majority of the votes lawfully cast.[1]

An election petition may be presented either by four or more electors, or by a candidate at the election. Any person whose election is questioned by the petition, and any Returning Officer of whose conduct a petition complains, may be made a respondent to the petition. The petition must be in the prescribed form, signed by the petitioner, and presented in the prescribed manner to the High Court in the King's Bench Division, "and the prescribed officer shall send a copy thereof to the Town Clerk, who shall forthwith publish it in the borough."[2]

Ordinarily the petition must be presented within twenty-one days of the election of which it complains; and within three days of its presentation the party petitioning must give security for costs, either by deposit or recognisance to such an amount not exceeding £500 as a Judge of the High Court may direct. Election petitions are tried by an Election Court, consisting of a Commissioner who is a qualified barrister, without a jury. A barrister is not qualified to constitute an Election Court, *i.e.* to be a Commissioner, if he is of less than fifteen years' standing, or is a member of the House of Commons, or holds any office or place of profit under the Crown other than that of Recorder. Nor is he qualified to constitute an Election Court for trial of an election petition relating to any borough for which he is Recorder, or in which he resides, or which is included in a circuit of His Majesty's Judges on which he practises as a barrister.[3]

Commissioners for the purpose of trying municipal election petitions are appointed by the Judges for the time being on the rota for the trial of Parliamentary election petitions.[4] An election petition is tried after seven days' notice in open court. The Election Court must certify its

[1] M.C.A. 1882, sec. 87.

[2] M.C.A. 1882, sec. 88.

[3] See M.C.A. 1882, sec. 92.

[4] A Parliamentary election petition is tried by two Judges (who must not be Law Lords) appointed by the High Court.

determination in writing to the High Court, but that determination is "final to all intents as to the matters at issue on the petition." When a charge of corrupt practices is made in the petition, the Election Court should, in addition to this certificate, report to the High Court upon the corrupt practices charged, with the names, if any, of the persons guilty, and should state whether corrupt practices have extensively prevailed in the borough or any of its wards during the election. The case raised by the petition may be stated as a special case, and so transferred from the Election Court to the High Court on the application of one of the parties, if the High Court so direct. Questions of law and evidence may also be reserved by the Election Court for submission to, and determination by, the High Court.

The Director of Public Prosecutions, or his assistant or representative, must attend the trial of a municipal election petition, and obey the orders of the Court as regards the summoning and examining of witnesses. It is also the duty of the Director, if he thinks it desirable in the interests of justice, to cause witnesses to be summoned, and to examine them with the consent of the Court. It is also the duty of the Director to prosecute either before the Election Court or before any other competent court any person who appears to have been guilty of a corrupt or illegal practice.[1] In the case of a corrupt practice, however, the Election Court, before proceeding to try a person summarily, must give him the option of being tried by a jury. Or the Court may order the person charged with a corrupt or illegal practice to be prosecuted on indictment, or before a court of summary jurisdiction.

With regard to the expenses and costs of an election petition, the general rule is that they are defrayed by the parties as the Election Court decides.[2] The remuneration and allowances of a Commissioner, his officers, clerks, etc., are fixed by the election Judges with the approval of the Treasury, while those of the Director of Public Prosecutions are fixed by the Treasury. The payments are made in the first instance

[1] For the duties of the Director of Public Prosecutions in this connection see Municipal Elections (Corrupt and Illegal Practices) Act 1884, sec. 28.

[2] M.C.A. 1882, sec. 98 (1).

by the Treasury, but are repaid to the Treasury out of the borough fund or borough rate. The Election Court has, however, discretionary power to order these expenses to be paid wholly or in part (*a*) by the petitioner when the petition appears to be frivolous and vexatious, and (*b*) by the respondent when the Court considers him to have been personally guilty of corrupt practices. Or if it appears to the Court that the respondent was not to blame, but that some other persons have been extensively engaged in corrupt practices, these persons may be ordered to pay the whole or part of the costs. Or again, if corrupt practices are found to have been widely prevalent, the Court may order the whole or part of the costs to be paid by the borough.

The procedure and practice of Election Courts is regulated by general rules laid before both Houses of Parliament, but made by the Judges for the time being on the rota for the trial of Parliamentary election petitions. Witnesses are sworn and may be cross-examined by the petitioner and the respondent or their counsel. A petition may only be withdrawn with the consent of the Election Court or High Court in the manner prescribed by the general rules. If it is withdrawn, the petitioner is liable to pay the costs of the respondent. Moreover, if the petitioner withdraws, another petitioner may be substituted. The trial of a petition is not brought to an end by the respondent ceasing to hold the office which formed the subject-matter of the petition.

This concludes our survey of the law relating to municipal elections. The first general remark to be made is that the ingenious and penetrating severity of the provisions against corruption of the vote and interference with the freedom and secrecy of its exercise leaves little or nothing to be desired. Indeed, the law is drawn out into such minutiæ of detail that it almost defies scientific treatment. The jurist is baffled in his search for general principles by a thick jungle of particulars; and yet, when all these elaborate regulations have been enacted, facts are still unprovided for, and upon the facts the Judge must still be left to decide. For unless the candidate is conclusively proved to have himself committed or authorised the corrupt practices, the Court must decide for itself whether the irregularities brought before it were suffi-

cient to have affected the issue of the election; and we may be permitted to doubt whether the law has not been darkened and complicated by clouds of unnecessary dust. There emerges, however, out of all this confusion at least one guiding principle. An election is only void if the candidate himself has committed one of the serious offences; but where the offences committed have been trivial and insufficient to turn the election, and no corrupt or illegal practices have been brought home to the candidate personally, then the election is not void.[1]

Not that the law is at all plain. Many of the sections are corrective, if not contradictory, of one another; but this only increases the power of the Courts and enables them to construe the statutes broadly and liberally.

If we turn from questions of draftsmanship and construction to the practical results achieved by these laws against corrupt practices at elections, no one can deny that their effect has been great and lasting. The old days of wholesale bribery and corruption have gone for ever and live only in the pages of the satirist and the historian. The open buying and selling of votes has been practically unknown during the last twenty years, and instances of it are even rarer at municipal than at Parliamentary elections. A skilled and well-paid agent takes good care not to be caught in the meshes of the law. Careful attention to the register and diligent canvassing are now the marks of a good organisation. Public munificence and hospitality, subscriptions to local charities and clubs, are the means by which incompetent wealth may still beat competent poverty. But bribery, pure and simple, is too risky to be often practised. The case law of the subject proves that the Judges have done their best to carry out the intentions of the Legislature in enforcing purity at elections. The development of party life and organisation, the multiplication of political meetings, the vastly increased circulation of political newspapers, have all contributed to this result. A modern campaign or agitation (like Mr. Gladstone's "pilgrimages of passion") is carried on by peaceable and laudable means. The public meeting, the newspaper, the pamphlet, the canvass,

[1] Cf., for example, the Municipal Elections (Corrupt and Illegal Practices) Act 1884, secs. 18, 19.

all play their part. And the disappearance of bribery[1] is due not only to the law and the spread of education, but also, and in a very large measure, to the extension of the franchise. The participation of the masses in the election and constitution of public bodies has proved a wonderful specific against corruption. But the purely legal safeguards could not be dispensed with, for electoral purity is a necessary condition of democratic administration—that is to say, of self-government.

[1] Since the above sentence was written an election petition, arising out of a municipal contest at Shrewsbury, has been tried (January 1903), with the result that several hundred persons were found to have been bribed by the Conservative agent at prices of half a crown or three shillings for each vote. They were all struck off the list of voters for a term of years. The trial showed that an extensive system of bribery has prevailed in the borough for a long time. Unfortunately a loophole is still left for "buying" a Parliamentary seat. The law cannot touch a man until he is an "adopted candidate." Hence candidates who are willing to spend large sums of money in a place often arrange that they shall not be formally adopted to contest a seat until just before the election.

CHAPTER VI

THE INNER ORGANISATION OF TOWN COUNCILS [1]

WITHIN the limits marked out for it by the municipal code, by other general Acts of Parliament, and by local legislation, the Town Council—that is to say, the lawful representatives of a municipality—is the sole organ through which the burgesses

[1] The provisions of the Municipal Corporations Act of 1882 which bear upon the subject-matter of this chapter are to be found in sections 22-24, and in the Second Schedule, which consists of thirteen rules for the meetings and proceedings of the Council. But the three sections and the thirteen rules only give the indispensable minimum, the bare skeleton of an organisation. A second and very important source of information is found in the standing orders and regulations which each Council frames independently for itself. A great number of these have been consulted for the purposes of the present chapter—the standing orders of Birmingham, Liverpool, Manchester, Leeds, Sheffield, Nottingham, and St. Helens may be particularly mentioned. The annual reports of the larger Town Councils with their printed proceedings also afford valuable material, which may conveniently be studied in the rich collection now stored in the library of the London School of Economics. An insight into the actual working of the municipal apparatus must be got from personal experience, from the study of newspaper reports, and of such publications as the *Municipal Journal*. Strangely enough, though the secret of the English municipality as a working organisation is hidden away in the relations of the Council to its committees and paid officials, this central feature of the system has hitherto been absolutely ignored, or very inadequately treated. Gneist's views of English town government (an out-and-out democracy) have been hindered and distorted by his Prussian spectacles. Vauthier and Arminjon have merely touched the fringe of this and many other vital problems. Shaw, in the third chapter (p. 63 *sqq.*) of his *Municipal Government in Great Britain* (entitled "The British System in Operation"), hits the main point happily enough in contrasting English and American systems of city government. No English writer has attempted to give a scientific description of the working of municipal government in his own country; but very instructive side lights are thrown upon the subject in the course of evidence given by the experts, who appeared before the Royal Commission on the Amalgamation of the Metropolis with the City of London, 1894.

may give independent expression to their collective will. The whole government of a town, if we except education and Poor Law administration, is concentrated in the Town Council. All the work entrusted to it by Parliament is carried out in pursuance of the Council's resolutions, or by its authority. But a body which, even in the smaller towns, ranges from twenty to forty, and seldom falls so low as twelve, and rises in the larger towns to a hundred or more, is obviously incapable of dealing in full assembly with the daily work of administration. Further, the mere circumstance that all powers and duties are concentrated in the Council, taken in conjunction with the position of the Mayor, who is not the responsible chief, but only the figure-head, makes a subdivision of the Town Council for administrative purposes inevitable. At this point the ways part, and upon the choice which may be taken depends the character of municipal institutions. The problem is how to make a representative body into an effective organ of administration. Various solutions have been tried in various countries; and each of these solutions takes shape and colour from the constitution and policy of the central government.

Representative administration in England.

In Prussia, and, with slight modifications, throughout the German Empire, two types of organisation have been devised to overcome the difficulty. The first type is marked by the institution of a "magistracy," a second chamber, set up by the side of the elective Councillors, and chosen by them—subject, however, to the approval and supervision of the central authority. All the members of the magisterial body, both paid and unpaid, must be confirmed in their office by government.[1] The German Town Council (*Stadtverordnetenversammlung*) is in reality a purely deliberative assembly; but even in that capacity it has almost lost its powers of initiative, the preparation of its resolutions or motions, as well as the execution of its decisions, having been entrusted to the *Magistrat*. The system is rounded off by the Prussian Burgomaster. In Prussia the Burgomaster is not a head-

The Prussian municipality.

[1] By the sovereign of the single federal states of Germany (*Landesfurst*) or by the provincial governor, acting in the sovereign's name.

man freely chosen by the representatives of the burgesses, but an intermediate state official entrusted with the direction of the town. He is nominated by the Crown, though chosen —out of a narrow circle of professional men and officials— by the Town Council. Candidates for the office both of Burgomaster and paid magistrate must produce technical or legal qualifications; and, moreover, the Crown may at its discretion disqualify a candidate, otherwise qualified, on the score of his political opinions. It follows that the real centre of municipal gravity is outside the Town Council. The town is governed by its magistrates and Burgomaster, who are only to a certain extent — mainly as regards expenditure — under the influence or control of the Town Council.

The second type of Prussian town is the so-called *Bürgermeistereiverfassung.* Here the Burgomaster combines with his own proper functions those of the *Magistrat.* He is Burgomaster and magistracy in one. He is the *Stadtvorstand*— the sole executive organ of town government. His assistants the *Beigeordneten* are not colleagues but subordinates, who merely do such work as he delegates to them. This second type of Burgomaster is, in truth, the Napoleonic prefect translated into German; and where he reigns, the part played by the Town Council is even less significant than in constitutions of the first type. Indeed, self-government in municipal affairs cannot, properly speaking, be said to exist under a *Bürgermeistereiverfassung.* The whole of the active administration is handed over to the Burgomaster, to be undertaken and carried on in his bureaus.

As for the central government, the German municipal code gives it an extraordinary amount, both of indirect influence and of direct mandatory interference in the conduct of town government. Its powers of initiative and supervision penetrate into every corner of municipal work.[1]

In Austria, on the other hand, both in the towns governed by the general code,[2] and in the larger towns which have their own special statutes,[3] we find that the administrative

[1] Cf. Schön, *Das Recht der Kommunalverbände in Preussen* (Leipzig, 1897), pp. 118, 119, 129, 336-339.

[2] *Gemeindegesetz.* [3] *Gemeindestatuten.*

problem has been solved very differently. There the Committee of the Council (*Gemeinderat*), or the Municipal Council itself (*Gemeindeausschuss*), freely chooses one of its own number as *Gemeindevorsteher* or Burgomaster. The Crown exercises no political influence over the smaller towns, and makes no attempt to circumscribe the sphere of choice by imposing special conditions and qualifications. In the constitutions of towns governed by their own statutes individual peculiarities are observable. As a rule, however, they have a "magistracy" of paid officials to look after the routine of daily business; but these "magistrates" are subject to the Burgomaster, who again is freely chosen by, and responsible to, the elected Councillors.[1] But the Austrian Burgomaster is not only freely chosen by the majority of his council. He is also distinguished from his Prussian namesake by his relations with the Council. The permanent staff of which he is the head, far from being independent, has grown up under, and is attached to, the Council. In Austrian towns of both type Councillors are chosen to serve on the administrative committees and "sections," which advise and resolve how the various departments and undertakings of the municipality are to be directed and conducted. Yet the Burgomaster is the real head; from him proceeds the motive power that drives the wheels of government. He supervises and controls the daily work, carries out the decisions of the Council, with such modifications as he deems necessary, acting always with a full sense of responsibility to the representatives of the burgesses. He is assisted in these executive duties by a permanent or Standing Committee of the Council, called, in the smaller towns, the *Gemeindevorstand*—in Vienna the *Stadtrath*, further aided by an organised body of officials called *Magistrat*.[2] In the Austrian system, therefore, the Burgomaster is the centre of gravity, and bears the stress and strain of administration. Yet he is responsible to the Council which elects him for his municipal policy. He is a

The Austrian system.

[1] In these towns, however, his appointment must be confirmed by the Emperor.

[2] In Prag, Brunn, and other large towns there are also *collegia*, consisting of both paid and unpaid functionaries, called magistrates.

member of the Council as well as its head, and he cannot defy the majority. In Austria, it must be owned, a special class of functions have been transferred from the central government to the municipalities, and in this special "transferred sphere"[1] of localised functions, the Burgomaster, though he is the executive organ, is subordinated not to the Town Council, but to the central government of the State. But these "transferred functions" constitute a comparatively unimportant part of the Burgomaster's duties. He does the main part of his work (and all the really local business) as the elected head of the Council. In this "independent sphere of municipal self-government,"[2] the State can only interfere with the Burgomaster and the Council in case a decree of the Council, or an administrative order of the Burgomaster based on such decree, is contrary to law. Besides the central government, the diet of the province and its permanent governing committee (*Landesausschuss*) also exercises a partial control, more particularly over the expenditure, of a municipality. But it remains broadly true that an Austrian town is practically free, both in law and fact, to manage its own affairs without interference by the State, so long as it does not commit an illegality.[3]

The United States.

Thirdly, in the United States, the Mayor is elected by the people, and is generally an independent authority co-ordinate with the Council. Often the Council has power to veto his appointments, while he has power to veto the Council's by-laws. The tendency of late years has been to shift the responsibility of administration more and more upon the Mayor, and to make him dictator during his term of office. The rôle of popular tyrant is the more easily assumed by the Mayor, since already "in many if not in all the American cities he makes up the Council Committees according to his own fancy."[4]

[1] *Uebertragener Wirkungskreis.* [2] *Selbständiger Wirkungskreis.*

[3] Cf. the Austrian *Reichsgemeindegesetz* of 5th March 1862, and the various *Landesgemeindeordnungen* and statutes; also the article on "Städte" (*Statuten*) by Brockhausen in the *Osterreichischen Staatswörterbuch* (published by Mischler and Ulbrich).

[4] Cf. A. Shaw, *Municipal Government in Great Britain*, p. 61 *sqq.* Mr. Shaw argues strongly against the American, and in favour of the English system. He thinks the Mayor should be deposed, and the Council restored to its authority.

We now pass to the English solution of the problem. An English Town Council is, as we have seen, a deliberative body, too large and unwieldy for the work of administration. Therefore let it be divided in order that it may govern. Let each of the different branches of administration be presided over by a special body, a section of the Town Council. This is what has actually been done. The Town Council forms itself into Standing Committees, groups of Councillors to manage permanent branches of administration, and into Special Committees for special purposes or temporary undertakings. Until the passing of the Education Act 1902, only one of these Committees, "the Watch Committee," was "statutory"—constituted, that is to say, by Act of Parliament and obligatory in all boroughs.[1] The duties of the Watch Committee in connection with the borough police are also fixed by statute, and it is provided that its members shall not exceed in number one-third of the Council. Otherwise Committees are in no sense obligatory. The Legislature merely enables the Council to appoint them without imposing any restriction as to their purposes or numbers. In the words of the statute, "the Council may from time to time appoint out of their own number such and so many Committees, either of a general or special nature, and consisting of such number of persons as they think fit, for any purposes which, in the opinion of the Council, would be better regulated and managed by means of such Committees; but the acts of every such Committee shall be submitted to the Council for their approval."[2]

The English solution—Committees.

A Town Council appoints its Standing Committees for the year at its opening sitting in the month of November.

[1] M.C.A. 1882, sec. 190. "The Council shall from time to time appoint, for such time as they think fit, a sufficient number not exceeding one-third of their own body, who with the Mayor shall be the Watch Committee." Cf., however, the Local Government Act 1888, sec. 39, for the transference of the Watch Committee's powers to the County Council in the case of boroughs of less than 10,000 inhabitants. Cf. also M.C.A., sec. 215, which provides that no charter of incorporation shall grant a separate police force to a town of less than 20,000 inhabitants. For the Education Committee see vol. ii., index.

[2] M.C.A. 1882, sec. 22 (2). A Committee cannot delegate its power (*delegatus non potest delegare*). Cf. Cook *v.* Ward (affirmed on appeal), 2 C.P.D. 255.

The Mayor is *ex officio* (not by law, but as it would seem by universal custom) a member of every Committee. In the larger boroughs the work of constituting Committees for the year, and assigning Councillors and Aldermen to each, is undertaken as a rule by a General Purposes Committee, or by a Committee of Selection formed for that purpose.[1] The arrangements made are generally the result of an understanding arrived at by the two political parties, and the Committees are usually confirmed by the Council name by name with little or no debate. The Committees vary in size: Liverpool for instance has, or had, Committees of twelve, fourteen, sixteen, seventeen, and twenty members, while the Committee of Selection consisted of twenty-two members, or twenty-three, including the Mayor. Sometimes a maximum is fixed by the Standing Orders of the Town Council. Thus at Leeds a Committee may not consist of more than twenty-one; at Manchester of more than twenty-four.[2]

The Standing Committees.

In constituting the Committees care is taken that every Councillor and Alderman shall sit on at least one Committee. And the proportion between Councillors and Aldermen is often jealously maintained on Committees.[3] A Committee elects its chairman at the first sitting of the year, and as a rule the selection is made without reference to political considerations. A Committee wants to be managed by the man it has most confidence in, and the one most likely to get through business rapidly and without friction. Aldermen, who are elected for six years, and therefore constitute the most experienced and stable element of the Council, are usually chosen to preside over the more important Committees. Thus a Committee is able to keep the same chairman for a number of years. As the work of a chairman is arduous, and constant attendance is required, an absolute rule is often laid down in the Standing

Chairmen of Committees.

[1] Cf. Royal Commission on Amalgamation, etc. (1894), Minutes of Evidence, Q. 10,127, where it appears that at Liverpool the Committee of Selection consisted of twenty-two members—two appointed by each of the Standing Committees at their last meeting prior to going out of office.

[2] Leeds Standing Order, 24; Manchester Standing Order, 9.

[3] Cf. Standing Orders of Leeds, 26 and 27; of Liverpool, 41, 42; Manchester, 9; St. Helens, 26.

Orders that no man may be chairman of more than one Standing Committee.[1] The chairmen of the previous year (if they are still members of the Council) naturally have a good deal to say with regard to the constitution, or reconstitution, of Committees which follows the November elections. At Nottingham, for instance, the old chairman practically arranges the new Committee subject to the confirmation of the Council. To preserve the continuity of administration it is the practice, and it is generally provided in the standing orders, that the new Committee shall take over all the duties and liabilities of the old one, and further, that the old Committee shall remain in office after the elections, until its successor is appointed, *i.e.* from 1st November to 9th November—the members of the Committee who are not re-elected abstaining, however, from attendance. Between the 1st and 9th of November, however, Committees do not meet unless expressly convened by the Mayor.

The number of Committees depends upon the extent to which administration is differentiated, and also upon the number of local and adoptive statutes under which the town is governed. A Standing Committee is appointed as a rule for each separate branch of municipal work imposed by the Public Health Acts, and other general or local statutes. Thus every borough of any size has building, sanitary, water works, markets, gas, and lighting, property and lands, highways, sewerage, finance and Parliamentary Committees. Of course a multitude of variations are possible in the large towns. Branches of business, like the management of highways or sanitation, or of corporate property, can be divided among two or more Committees. Besides all these, there is in most cases a General Purposes Committee, which arranges business for the monthly meeting, initiates or discusses new schemes and enterprises, and generally undertakes any work that does not naturally belong to any of the other Standing Committees.[2]

How the work is divided.

[1] *E.g.* at Liverpool, though an exception is there made as regards the Standing Committee.

[2] Sometimes questions of this kind are referred to the Parliamentary Committee, more often to Special Committees.

By the side of these ordinary Standing Committees, which are practically universal—though their number varies and dwindles to one or two in the very small boroughs[1]—we find that other Standing Committees have been created in particular boroughs, to administer undertakings upon which the Council has embarked with the consent though not at the command of Parliament. Such Committees, to mention only a few of the most common, are those which have been established to control or manage tramways, electric lighting, parks, public museums, and cemeteries. This second class of Standing Committees may itself be subdivided into two groups, according as the duties and powers of the Committee are derived from Adoptive or Local Acts.

Special Committees.

Thirdly, there are Special Committees appointed for some temporary work or investigation. Sometimes, for instance, a Special Committee will be appointed to consider and report whether it would be desirable to establish municipal works for the purpose of lighting the town by electricity, or again to prepare a scheme for that purpose.

A fourth and quite distinct class comprises what are called Joint Committees, such as River Boards, Drainage Boards, Asylum Boards, and (until 1902) Technical Education Boards, upon which Town Councils and County Councils are represented. Thus the Liverpool City Council appoints eight of its members to represent the County Borough of Liverpool on the Lancashire Asylums Board. And again by Provisional Order, and under the West Riding of Yorkshire Rivers Act 1894, a Joint Committee called the West Riding Rivers Board has been constituted to prevent the pollution of streams and rivers. The Board is composed of representatives of the West Riding County Council, and of the County Boroughs of Bradford, Halifax, Huddersfield, Leeds, and Sheffield.

Joint Committees.

Lastly, it is a common practice for a Council, especially in the smaller towns, to imitate the process, familiar to the

[1] The municipal borough of New Romney, for example, has a Council of sixteen (four Aldermen and twelve Councillors), a perfectly manageable size for purposes of administration; and consequently a great deal of committee work is transacted at the ordinary meetings of the New Romney Council. The population of New Romney is only about 1400.

House of Commons, of resolving itself into Committee. Instead of a "Committee of the whole House" you have a Committee of the whole Council. In the larger Councils this device is sometimes adopted for the purpose of excluding the press and the public. In some of the smaller ones it is done to dispense with the necessity for a multitude of Standing Committees; and there are weekly or monthly committee meetings of the Council, as, for example, at Dover and Faversham. As the proceedings of the Council in Committee must by law be sanctioned by the Council, this procedure gives a formal opportunity, of which an angry and obstructive minority may avail itself, of re-debating matters at issue. It is difficult indeed to conceive an easier and more elastic system, or one more adaptable to the variable and diversified conditions of municipal administration, than the committee system as it is practised and understood in England.

The Council in Committee.

The special position of the statutory Watch Committee, as the only Committee[1] made obligatory by the municipal code, and endowed with a definite set of important functions, has already been observed. From this flows the important consequence that the proceedings of the Watch Committee are not subject to review by the Council. Once appointed by the Council, the Watch Committee is independent, so long as it confines itself to the duties assigned by the Municipal Corporations Act.[2] When other business is delegated to it by the Town Council, the Watch Committee reverts, so far as that business is concerned, to the status of an ordinary committee. Payments to the borough police, and other payments made under Part II. of the Fifth Schedule must, however, be submitted by the Watch Committee to the Council for approval.[3]

[1] There are individual instances, like that of the Public Health Committee at Nottingham, of a Statutory Committee created by local Act. In that case the Nottingham City Council took power under a local Act to delegate to the Public Health Committee the whole of the powers vested by the Public Health Acts in the Council, so that the committee in question is practically the Urban Sanitary Authority. See Royal Commission on the Amalgamation of the City and County of London, Minutes of Evidence, Q. 9569-9572.

[2] M.C.A. 1882, Part IX. "Police," secs. 190-200.

[3] Cf. R. *v.* Thompson, 5 Q.B. 477.

But the formation of standing and special committees leaves the organisation of municipal government still imperfect. The idea at the root of the committee system followed out to its logical consequences produces a further subdivision of large committees, both standing and special, into sub-committees. In many of the larger towns the Town Council have gone so far as to institute standing sub-committees, which are regularly appointed at the beginning of each municipal year by the newly constituted committees in accordance with the standing orders, just as the committees are themselves appointed by the newly constituted Council. At the first meeting, then, of a newly constituted committee in November, sub-committees if required are appointed. The sub-committee appoints its chairman, and the chairman of the parent committee is an *ex officio* member of all its sub-committees,[1] just as the Mayor is an *ex officio* member of all the Council's committees. Sub-committees have no statutory sanction. They are created by the Council in pursuance of its right of self-organisation; and in most towns of any size they are freely appointed. In Leeds—to take a single illustration—the property committee has six sub-committees, one for the city buildings, and one for Roundhay Park, while the rest look after the smaller parks and recreation grounds, the city being divided into four parts for this purpose. Again, the Leeds Highway Committee has a management sub-committee, and a stone-purchasing sub-committee; while the library committee has no less than seven sub-committees; and so on. It is the practice in some large towns[2] for a committee, especially if it has large payments to make for wages and the like, to have attached to it a standing audit sub-committee for the special purpose of checking its expenditure.[3]

Sub-committees.

The number of committees cannot be said to be even roughly proportioned to the size of a town. Thus in the case of Nottingham with eighteen standing committees,

[1] This provision is important in order that the chairman of a committee may be able to get a complete grasp of that branch of administration over which he presides, and may at least have no excuse for ignorance.

[2] *E.g.* Leeds and Sheffield.

[3] A device which is all the more necessary, seeing that the accounts of boroughs, except for education, are not audited by the Local Government Board.

Leeds with fifteen, and Liverpool with eleven, you have committees descending, and populations ascending in numbers. St. Helens, a manufacturing town of middling size, has thirteen committees. Chard, with between four and five thousand inhabitants only, has as many as nine committees.[1]

The number of Committees.

The division into committees and sub-committees follows

[1] Sheffield—it had a population of 389,000 at the census of 1901—may serve as an example of a full-blown organisation. The City Council consisted in 1899 of 48 Councillors and 16 Aldermen, and the town was divided into 9 wards. The Council had 16 committees, the names of which indicate the departments of administration—City Hospitals, Electric Light, Finance, Free Public Libraries and Museums, General Purposes and Parks, Health, Highway and Sewerage, Improvement, Mappin Art Gallery, Ruskin Museum, Stage Plays Licensing, Technical Instruction, Tramways, Watch, Water. Three members of the Council represent it on the West Riding Rivers Board (a joint committee), and six on the (West Riding) Asylums Committee. The City Council has also three representatives on each of the two bodies which manage Sheffield University College and Sheffield Grammar School. The above-mentioned 16 committees vary in strength from 8 to 15 members. Like most other towns, Sheffield has availed itself of the powers granted under the Libraries Acts to strengthen the Libraries Committee by co-option with the addition of burgesses not members of the Council. There are altogether 53 sub-committees with a membership of from 3 to 7. Thus the Health Committee has seven sub-committees—namely, auditing, cleansing, and scavenging, baths, smoke nuisance, housing of the working classes, and sanitary. The sub-committees of the Watch Committee are also seven in number, and are entitled—Police force, prison inspection, common lodging-house, hackney carriages and omnibus, clothing, and lighting. The following table, which gives the number of sittings of the Sheffield City Council and its committees during the year 1899, affords a rough measurement of the "intensity" of administration :—

	No. of Sittings.		No. of Sittings.
Council	18	Water	19
Watch Committee	27	Stage Plays Licensing	9
General Purposes and Parks	18	Ruskin Museum	10
Health	27	Mappin Art Gallery	12
Free Libraries and Museum	14	Parliamentary	6
Highway and Sewerage	26	Technical Instruction	5
Finance	53	Tramways	26
Improvement	23	Electric Light	19
City Hospitals	29	Allotments	2

The attendance of members at the Council and its committees is also published in the Year-Book of the city of Sheffield (see *Year-Book for* 1899-1900, p. 229), as of many other towns. Cf. borough of St. Helens, Standing Order 36. This device encourages the representatives of the public to prosecute their duties diligently. Slackness in attendance is sure to be commented on by an opponent during an election campaign.

the "Standing Orders and Regulations" made from time to time and altered by the Council without any interference from outside. These Standing Orders prescribe the procedure at the meetings of the Council as well as of its committees; but a Standing Committee in one of the great towns often makes additional rules for the conduct of its own business.[1]

Committees and procedure.

At the head of a committee is the chairman, an important person, who may exercise a very real control over his department, for in his hands are gathered up all the strings of administration. A committee is not competent to act unless a certain number of its members, a *quorum*, is present. An attendance of three or five usually constitutes a *quorum*.[2] Members of the Council are usually allowed, though not of right, to attend meetings of committees to which they do not belong. Often too representatives of the press are welcome visitors at committee meetings, when business of public interest not requiring secrecy is transacted. The meetings of sub-committees, however, are strictly private, and reporters present at a committee meeting can be excluded, should it be desirable, by the committee resolving itself into a sub-committee, just as the same purpose is served by the Council resolving itself into a committee of the whole Council.[3]

We now come to the decisive question which this peculiarly English system of government has had to answer. What should be the relations of a working committee to its superior—the Council on the one hand, and to its inferiors, the paid officials, on the other? The problem is a double one, and its halves may be taken in order.

In law the relationship of a committee to the Council is governed by two principles. First, there is the great constitutional principle, that administrative bodies created by splitting an authority into committees never cease to be the representatives of the original electors; and this is

[1] On Standing Orders, see later, pp. 317 *sqq.*, 325-327.

[2] Cf., for example, Sheffield Standing Order 21, Leeds Standing Order 34.

[3] For various practical methods by which the pleasures of publicity are preserved and its dangers in regard to contracts, etc., avoided, see Royal Commission on Amalgamation of London. Minutes of Evidence, Q. 9539 *sqq.*, 10,140 *sqq.*, and 10,255 *sqq.*

itself a part and parcel of the still broader conception—a conception underlying the whole system of English municipal government, and pursued as we shall see with relentless logic to its utmost consequences—that the elected representatives of the burgesses, and they alone, are obliged and empowered to manage municipal affairs and transact municipal business.

The relation between a Council and its committees.

Secondly, there is the administrative or legal principle that a body possessing only delegated powers is bound to submit its acts to the approval of the delegating authority. In the words of the statute: "The acts of every such committee shall be submitted to the approval of the Council."[1] That is all the Municipal Corporations Act has to say upon the subject. It takes no cognisance, as we have seen, of the existence of sub-committees. But the rule is plain and unambiguous. All proceedings of committees must come up for confirmation by the Council. At Liverpool, for example, this is done every month, and the Council are informed what the committees are doing by an epitome of the proceedings of each committee, which the Town Clerk has to publish every week. The information contained in the epitome is short, "because the object of it is not to say exactly what is being done, but to give sufficient notification of the subjects dealt with to put any one on inquiry, if they think it is a subject that they are interested in."[2] At the monthly meeting of the Council the proceedings of the committees come up for confirmation or disapproval. By the Standing Orders of the Liverpool Council certain subjects dealt with by committees must be placed on the Council summons. For instance, no committee can accept a tender over £25, unless the fact of its acceptance of the tender is placed on the summons. But the interpretation put upon the principle which regulates the relations of a committee to the Council varies in different places, and depends upon the Standing Orders formulated by each Council for itself. Obviously section 22 of the Municipal Corporations Act, above quoted, only lays down the broad principle. The precise make of the hinge upon

[1] M.C.A. 1882, sec. 22 (2).

[2] See evidence of the Town Clerk of Liverpool before the Royal Commission on the Amalgamation of London (Minutes of Evidence, Q. 10,194 *sqq.*)

which the whole government of a town turns is left by Parliament to the decision and choice of the Town Council—another strong proof and guarantee of municipal autonomy. It is important then to remember that as regards the relationship subsisting between the Town Council and its committees, based as it is on a broad statutory principle, no general description can be applied word for word in all its details, and without exception, to every municipal borough. There are a host of practical details in which one set of Standing Orders differs more or less from another. That is natural, and must occur even in countries whose municipal government is imposed and controlled from above, and where the least possible room is allowed for local variations. Much more then in England, where we have to deal with municipal institutions, which have been erected upon the basis of a comparatively small number of statutory rules, in order that the greatest possible freedom might be left to the autonomous will of the municipal community.

Looked at from the standpoint of administration, the chief characteristic of the English system is seen to be the apportionment of the whole of the actual work of government between the committees, so that no gaps are left. In other words, except in the smaller places where the Council itself does committee work, the whole province of administration is occupied by the different committees, and the Council takes no direct part in the actual business of administration, but confines itself to its deliberative duties, and to controlling, ratifying, or disapproving the performances of its committees. Obviously, therefore, all depends on the mode in which the Council exercises this control. How can a firm hand be kept on administration without hampering the committees unduly? How can the committees be efficient without being independent? A basis for the solution of this difficulty is afforded by a provision of the Municipal Corporations Act, which enacts that "a minute of proceedings at a meeting of the Council or of a committee, signed at the same or the next ensuing meeting by the Mayor, or by a member of the Council or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be

The minutes of committees.

received in evidence without further proof."[1] Further, by paragraph 12 of the second schedule to the Act, "minutes of the proceedings of every meeting shall be drawn up, and fairly entered in a book kept for that purpose, and shall be signed in manner authorised by this Act."

The above sub-section and paragraph, as we have said, provide a basis. The minutes of the Council and of its committees or sub-committees lie on the table during the meeting for the inspection of any member. Further, it is usual for the resolutions and proceedings of a committee, which have to come up for approval by the Council, to be open for inspection on the two days previous to the Council's meeting. In most of the large cities, as in the case of Liverpool, there is further a weekly or monthly epitome[2] of proceedings showing the doings of each committee at a glance, and printed and supplied to every Councillor and Alderman shortly before the monthly meeting of the Council.

Such epitomes contain the chief decisions, arrangements, and acts of administration made or done by the committee in the period under revision, and a brief abstract of the ordinary business. With a good epitome before him any Councillor has a starting-point for the investigation of details, so that he can frame inquiries or move amendments when the minutes come up before the Council for confirmation. The minutes of the different committees are laid before the Council in turn for approval or disapproval, as the case may be.

But before proceeding further we must briefly review the meetings of the controlling body itself.

The meetings of the Town Council.

The Town Council is bound by statute to hold four sittings in the year, the first at noon on the 9th of November, the other three "at such hour on such other three days before the 1st of November the next following as the Council at the quarterly meeting in November decide, or afterwards from time to time by Standing Order determine." But the Mayor may also at any time call a meeting of the Council.[3]

[1] M.C.A. 1882, sec. 22 (5).

[2] Cf. for these epitomes p. 315, with a note on Liverpool (and Birmingham). Cf. also Liverpool Standing Order 56, Manchester Standing Order 11, Leeds Standing Order 41.

[3] *Vide* M.C.A. 1882, second schedule, rules 1-3.

The Standing Orders of a town ordinarily provide for monthly sittings.

Whether epitomes are in vogue or not, no business may be transacted at a meeting other than that specified in the summons,[1] which must be signed by the Clerk, and delivered at the house of every member of the Council three clear days at least before the meeting. Notices of motions should be delivered to the Town Clerk at least a day before the notice of summons is printed, so that the motions may appear in the agenda. The ordinary procedure at a meeting of the Town Council is as follows:—First, the minutes of the preceding meeting are read and passed; then questions may be put; then come personal announcements by the chairman; then the agenda of the day are gone through, following the order in which the reports of the various committees were arranged in the summons; and so all items are disposed of —some without debate or division, some by vote after discussion. The proceedings are open to the public, and are presided over by the Mayor, or (in his absence) by the Deputy-Mayor, who regulates business in the manner prescribed by the Standing Orders. These Standing Orders are made, as we have seen, by the Council, which alone has the power of regulating its own proceedings and business, and the orders may from time to time be varied and revoked by the same authority.[2] By Standing Order a Council fixes the days and hours for its meetings, as well as the number of meetings to be held during the whole year. The afternoon between 2 p.m. and 6 p.m. is the time almost invariably fixed,[3] though oddly enough, as we have seen, the first quarterly meeting of the Council must by law be held at noon. A precise observance of the forms and rules of debate is the mark of all public business in England, and the Town Councils are no exception. A character for complete impartiality towards members of the different parties belongs to the Mayor, or his deputy, as chairman; for to the chair, in however humble an assembly, there attaches in England something of that

[1] Except in case of a quarterly meeting, when the business prescribed by the Act must be transacted whether on the agenda or not—M.C.A. 1882, Second Schedule, rule 8.

[2] See M.C.A. 1882, Second Schedule, rule 13.

[3] See M.C.A. 1882, Second Schedule, rule 2.

feeling which the House of Commons entertains for its Speaker. The Speaker indeed is a priceless example to local parliaments; the ruling of the chair serves to stay the passions which are so liable to be excited by local jealousies. There is little variation in practice as regards the conduct of debates. The questions which may precede the business of the day are not allowed to lead to discussion. Motions for adjournment may be made at any time, but must be submitted without discussion; no member may speak more than once to the same motion, save that the mover has the right of reply; voting is by show of hands, or by calling over each name, if this is demanded by not less than five members of the Council. The Standing Orders may be suspended only if a resolution for their suspension is carried by a majority of the whole Council, or upon a motion of which due notice has been given.[1] It should be added that a Borough Council has the right of receiving deputations, though the number of a deputation must not exceed a certain maximum fixed in the Standing Orders. In fine, both as regards the forms of procedure and their ways of managing business, municipal councils—more especially in the large towns—bear a remarkable resemblance to the House of Commons. They are microcosms of Parliamentary government.

The Council's control over its committees.

It has been seen that the daily work of administration, though transacted by the committees, is wholly subject to ratification by the Council. This control is ensured in two ways: first, every committee must make its estimates for the year, and get them accepted by the Council; secondly, every transaction of every committee, and every payment made, must be approved afterwards by the Council. Thus the principle laid down in the Municipal Corporations Act receives a strict interpretation. But though the interpretation is strict it is not, and cannot be, literal, so great, and in some cases insurmountable, would be the difficulties involved. For the work of a single committee in one of the large towns would alone be too formidable to be tested, and discussed bit by bit in a monthly sitting of the Council. A way out of the difficulty

[1] See Leeds Standing Order 53, and Sheffield Standing Order 20*a*, in which latter case a majority of three-fourths of those present is requisite.

is found by dividing the transactions of a committee into two parts—the general proceedings, and those which are of special interest, and importance. Only the second class are placed on the agenda paper in detail. The rest are classed together and proposed by the chairman of the committee in some such form as the following:—"It was moved by Mr. Councillor ——, seconded by Mr. Councillor ——, and resolved that the Council approve the proceedings of the committee with the exception of the matters referred to in the succeeding notice." Thus the general transactions of the committee during the month are ratified; then follow one by one the transactions of special importance upon which discussion is likely to arise. To assist committees in drawing the line between the two classes of administrative acts—those which require only general, and those which require special ratification—the Standing Orders of most large towns lay down the rule that only such transactions as involve a fixed expenditure, say of more than £25, or a weekly expenditure of £2, or a yearly expenditure of £104, need be laid before the Council as particular items. All other agenda may be classed as general proceedings and taken as read, in order that a merely formal compliance may be made with the statutory provision. Whether the Standing Orders so provide specifically or not, any Councillor who objects to one of the transactions thus formally disposed of may propose that it be omitted from the general proceedings, and be disapproved by the Council.[1] Moreover, any member of the Council may ask that any portion of the minutes of a committee whose proceedings are under review be read aloud.[2] Also all committees are bound to draw the attention of the Council to any important decision they may have taken; or to any transaction which deviates from previous practice; or to any act likely to involve considerable ex-

[1] If a committee has to present a special report to the Council, every Councillor and Alderman must receive a printed copy of such report three days before the monthly sitting of the Council. Cf. Leeds Standing Order 43, Sheffield Standing Order 28. In the large towns business is greatly expedited and facilitated by the free use of the printing press. All material of importance for the use of sub-committees, committees, or the Council, is printed so that every member may have his information in the same convenient form.

[2] Cf. Manchester Standing Order 10 (3).

penditure. This is done, of course, by detaching such a decision or transaction from the general proceedings, and giving it special notice in the agenda.[1]

The above is an outline of the procedure ordinarily adopted by busy Councils in reviewing the work of their committees. But in some of the large towns even these time-saving devices are insufficient for the expeditious transaction of business. Further abbreviation is necessary to prevent the Council from frittering away its time and strength in details, and in the mere formalities of ratification; for after all, the main duty of the local parliament is to exercise a general control over the course of municipal administration, and not to descend into minutiæ which may prevent the adequate discussion of large and critical problems. Accordingly, a further step is taken. A monthly epitome of the minutes of each committee is prepared by the Town Clerk, submitted to the Chairman of the Committee, and sent to every member of the Council a few days before the monthly meeting. The minutes are not even formally proposed; unless objection is made they are taken as read, and the functions of control vested in the Council are confined to debating and deciding upon the particular reports, proceedings, and proposals which each committee thinks fit to select for reference to the Council.[2]

In any case there is, however, another safeguard which helps to preserve to the Council a real control over the whole concrete administration. That safeguard is the municipal budget. In all boroughs the basis of the annual budget is laid in the committees. Some time before the end of the financial year each of the standing committees prepares an estimate of its probable requirements for the year. By the regulation of the Sheffield Council each of these estimates must be ready prepared on or before 4th February. This estimate is sent to the Finance Committee; the Finance Committee

The municipal budget.

[1] Cf. Manchester Standing Order 10 (5).

[2] Cf. for this last plan, as it is practised in Liverpool and Birmingham, Royal Commission on Amalgamation 1894, Minutes of Evidence, Q. 10,194 *sqq.* and 10,255 *sqq.* The Town Clerk of Liverpool admitted that in some cases the confirmation of his monthly minutes is more honoured in the breach than the observance; cf. for the *Monthly Epitome*, Manchester Standing Order 11.

collates the reports or estimates sent in by all the other committees. The report of the Finance Committee, together with a copy of the estimates, is forwarded to every member of the Council at least a week before the meeting of the Council in March, and is then brought before the Council in a form arranged by the Finance Committee. The budget then consists, first of an annual estimate of municipal expenditure for the year compiled out of the estimates sent in by the various committees. The estimate of each committee is laid before the Town Council, and the chairman of every committee has to justify his estimate to the Town Council if it is challenged. When the estimates are justified and accepted, the chairman of the Finance Committee proposes the second part of the budget, which consists of a series of resolutions authorising each committee to spend its estimates for the purposes proposed; and at the same time the chairman of the Finance Committee proposes a rate of so many pence in the pound necessary to meet the expenditure.[1] The financial year for municipal as for imperial purposes ends on 31st March. After that date each committee knows exactly what its last year's expenditure was, and is thus able to make an estimate of expenditure for the coming year. Meanwhile, until the estimates are prepared and the budget passed, a good deal of unauthorised expenditure goes on, often for three or four months. In some towns, *e.g.* Leicester, in order to avoid this unauthorised expenditure, the estimates are made before 31st March, so that the budget can be brought in and passed at the commencement of the financial year. If such a course be adopted, the estimated expenditure is too much in the nature of guess-work, and there is much objection to laying a rate upon so uncertain a basis. Later in the year supplementary estimates sometimes prove to be necessary, and these have to be brought before the Council for its approval, and

[1] Cf. Royal Commission on Amalgamation 1894, Q. 9463 *sqq.*; also, cf. *Sheffield Year-Book* (1900), p. 184. This is the plan followed in Nottingham and Sheffield. In other towns, *e.g.* Manchester and Liverpool, the estimate of each committee goes direct to the Council. At Sheffield the financial year commences on 26th March. At the meeting of the City Council in March "the consideration of the estimates and the adoption of the basis for levying a rate" are placed on the agenda paper, "next after the communications to the Lord Mayor" (*Sheffield Year-Book*, p. 185).

placed upon the agenda.[1] When the estimates proposed by a committee have been sanctioned, payments are made by means of a statutory order on the treasurer, which order is usually signed by three members of the Finance Committee, and countersigned by the Town Clerk.

Then comes a wider question—How far estimated expenditure already sanctioned by the Council comes up again before the Council for ratification as realised expenditure. Generally speaking, an item does not again come up effectively until the Treasurer's or Accountant's report is laid before the Council. After the Council has sanctioned the estimate and the sum estimated has been spent, as appropriated, the Committee may be discharged. Sir Samuel Johnson, Town Clerk of Nottingham, was asked whether the various items of expenditure did not come up before the Council every week or month? He replied that in a sense they did, for the security of the treasurer.

Ratification of expenditure.

At the end of every meeting of the Council the Chairman gets up and says, "The orders upon the Treasurer are now upon the table at such and such pages therein, and I propose that they be confirmed by this Council." Then they are signed by three members and countersigned by myself, and that is all we do with them. I never heard an item of such expenditure questioned, and if anybody questioned an item he would be requested to give notice.[2]

A second course which is adopted in many towns[3] relieves the Council from the necessity of formally confirming these statutory orders on the Treasurer. The work is delegated by a standing order to the Finance Committee. In either case the Borough Treasurer receives a sort of monthly whitewash. The orders for payment are "found correct." The upshot of all this is that the occasions for discussing the real as distinguished from the estimated expenditure are two:—

1. The annual report of the Finance Committee.
2. The annual report of the Auditors.

Of the latter we shall have more to say in another connection.

[1] This applies to new expenditure on purposes not foreseen, *e.g.* in consequence of an epidemic. For excess of expenditure on purposes already foreseen committees get their bills of indemnity when their reports come up for confirmation (R.C. 1894, Q. 9513-9515).

[2] See Royal Commission 1894, Q. 9511. The last statement is surprising.

[3] *E.g.* Birmingham and Liverpool.

The Finance Committee plays, it will be seen, a large part in the scheme of financial control. Its position is altogether peculiar and distinct from that of the rest of the committees, because its duties bring it into relation with them all, whereas theirs are concerned with specific branches of administration. Moreover, it is the practice in many towns to recognise in the constitution of the Finance Committee its central and superior position by composing it out of the chairmen of the other committees. Nevertheless, the Finance Committee cannot be said to exercise a thorough control over the expenditure, because it is not endowed with the necessary authority or the necessary knowledge to test and pronounce upon the requirements and necessities of other departments. At Nottingham an attempt was made to give the Finance Committee this sort of control; but the attempt failed, the other committees arguing that the Finance Committee was usurping the duties of the Council, and was not competent to pronounce upon the financial requirements of a committee with whose work it was not and could not be acquainted. Nevertheless, the Finance Committee may, and frequently does, exercise pressure, especially if, by inducing the committees to reduce their estimates a little, a saving of a penny in the pound may be effected in the rates. Again, if a committee overspends its monthly allowance, it becomes the duty of the Finance Committee in the last resort to stop the cheques of the delinquent body, and to report its reasons for so doing to the Council.[1]

The Finance Committee.

The foregoing survey of the system of administration by committees now established in England shows clearly that one great advantage has accrued—an advantage which springs directly from the fundamental principle of autonomy underlying the whole of the statute law. This advantage consists in the extraordinary adaptability of the system to towns of the most diverse sizes and needs. If a council undertakes a new duty or enterprise, no change in organisation is required. All that

Adaptability of the Committee system.

[1] Royal Commission on Amalgamation, 1894. Minute of Evidence, 9502, 9503. This extreme step had only been taken twice in Sir Samuel Johnson's long experience of the Nottingham City Council. For further details upon the subject, see chap. viii. on Municipal Finance.

has to be done is to form a new committee. The committee, in fact, is a mechanical device which enables the municipal engine to move easily in new directions and adjust itself to new work without any structural alteration. The wonderful flexibility of the system depends upon its equally wonderful simplicity. If the formation of committees had been hampered by minute statutory regulations there would have been none of that elasticity which so readily adapts itself to the needs, habits, and traditions of different towns. Their differences could not have been satisfied, as they now are, by variations in the arrangement of the same apparatus without ever disturbing in the least the simple principle on which they all rest. Another grand advantage of the committee system is that it turns into useful channels the special knowledge and talents of individual members of the Corporation, and forms a number of small administrative bodies, each with experience and traditions of its own. At the same time, there is no stagnation, for recruits bring fresh blood every year and prevent experience from degenerating into mere routine. Thus, on the one hand, a town is preserved from a rash and flashy management of its business; on the other hand, from red tape and immobility. Another circumstance which preserves administration from rigidity and routine is the supervision of the Council and the independent criticism which is dealt out by members of other committees, to say nothing of the stimulus sometimes applied by the local press. To the theoretical student of municipal constitutions the committee system presents itself mainly as an expression of administrative autonomy in the administrative organisation itself. The autonomy already created by a democratic franchise and by the constitution of a representative Council is made effective by the creation of an autonomous organisation. The committee system is the second pillar upon which the true self-government of English towns rests. It has been our object in delineating it to make clear that by no other system could so full measure of self-government have been attained.

Every municipal borough has also the right to legislate for itself and for its citizens. The laws relating to its own procedure are called "Standing Orders." The laws directly

affecting the burgesses are called "bye-laws." But the powers (given as we have seen in the second schedule of the municipal code) by which "the Council may from time to time make standing orders for the regulation of their proceedings and business" have been very liberally interpreted. For most Councils have laid down under the title of "standing orders" a great number and variety of rules for the regulation of the whole municipal administration. So that it may be said that the standing orders are a continuation, a development, and an elaboration of those general principles and broad outlines of the municipal government and constitution which are contained in the Municipal Corporations Act. The unlimited power of organisation entrusted to a municipality can only be fully understood when we realise the scope and purpose of its standing orders. "Regulations for the committees and sub-committees" generally comprise a whole series of details for the guidance and organisation of committees. Not only are the powers and duties delegated to each committee precisely stated, but elaborate directions are given which go far beyond the limits of the mere formalities of organisation. Thus you may often find standing orders prescribing methods in which work shall be done, forms in which tenders shall be made, and conditions under which they shall be accepted. Then the directions to the committee which deals with licenses to music halls and theatres often amount to administrative law, and affect not merely the licensees but also the theatre-goers.[1] And lastly, there are in the standing orders a number of disciplinary rules laid down for the officials in the municipal service.[2] It is customary for Municipal Councils to re-enact their standing orders every year at the first sitting of 9th November; and this is

Sub-legislation—Standing Orders.

[1] Cf., for example, Manchester Standing Order 24.

[2] Liverpool Standing Orders 73, 110-113—a good instance of autonomous standing orders regulating the smallest details of administration. Students may also be referred to the Bye-laws and Regulations of the London County Council, which now fill two volumes of 300 pages each, and provide systematic rules by which every committee and the officials of the departments over which it presides must conduct business. Similarly, the Standing Orders of Liverpool (57-72) provide a complete code for the municipal civil service. Standing Orders 83-86 give a carefully elaborated *Submissionsordnung*, similar to that which may be found in the Standing Orders of Birmingham, Nottingham, and other large towns.

naturally an occasion for proposing alterations and additions. It should be added that the conduct of administration upon some special occasions or doubtful point is often ruled by a simple resolution of the Council without resort being had to a standing order.[1] The theoretical importance of this general power of self-organisation which is enjoyed by English towns comes still more clearly into view if looked upon as part of a higher function, *i.e.* as a part of the general power of sub-legislation which belongs to a Borough Council as the public local authority of the town. English jurisprudence speaks of the quasi-legislative power, but the expression is not wholly adequate, for a Town Council has the power to make bye-laws (or by-laws) which have binding force within the municipal boundaries so long as they do not conflict with the laws of the land, and so long as they are agreeable to the statutory provisions from which they derive their validity. A bye-law, said Lord Abinger, has the same effect within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large.[2] So important is this general power possessed by the representative body of a municipal corporation, that we shall not be wrong if we recognise in it the third great pillar of municipal autonomy. Hence the need for considering the matter more closely.[3] The statutory foundation for this general power of subordinate legislation is laid by section 23 of the Municipal Code, which runs as follows:—

Bye-laws.

> The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough,

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[1] Cf. *Year-Book of Sheffield*, p. 185, where a resolution of the Finance Committee, dated 24th May 1894, will be found: "That the Finance Committee should, in the month of November or December in every year, confer with the Chairmen of the Standing Committees before the Estimates are prepared, with a view to fixing the amount of General District Rate from time to time, and its apportionment amongst the various spending Committees." This resolution was still in force in 1900.

[2] Hopkins *v.* Mayor of Swansea (1839), 4 M. and W. at p. 640.

[3] Cf. for what follows M.C.A. 1882, sections 23, 24; and Public Health Act 1875, sections 182-188; also commentaries thereon, especially Arnold, Glen, and Macmorran.

and may thereby appoint such fines not exceeding in any case £5, as they deem necessary for the prevention and suppression of offences against the same.

The above provision is not, however, an innovation introduced into English law by the Municipal Corporations Act. On the contrary, the power to make bye-laws was an old common law right of Corporations. It was also a principle of the common law, and still is, that bye-laws are of no effect if repugnant to the general laws of England.[1] The power of making bye-laws implies therefore no power to alter laws. It is conferred in order that the freedom of municipal life may be complete within the limits assigned by Parliament. A bye-law can, of course, be repealed by the direct or indirect operation of an Act of Parliament. Any court of law may also refuse to enforce a bye-law, if it holds such bye-law to be either unreasonable, *ultra vires*, or repugnant either to the common or to the statutory law of England. But over a bye-law framed by a Municipal Corporation for the good government of the town under the Act of 1882 there is, strictly speaking, no control exercisable by any department of the central government. Those bye-laws, however, which are framed by a municipal corporation as urban sanitary authority under the Public Health Act of 1875 cannot take effect unless and until they have been submitted to, and confirmed by, the Local Government Board.[2] But the same Act expressly provides that bye-laws made under the Municipal Corporations Act for the prevention and suppression of certain nuisances "shall not be required to be sent to a Secretary of State."[3] The result is, that all bye-laws relating to the suppression of nuisances, whether those nuisances arise under the Municipal Code or the Public Health Code, must be submitted for confirmation to the Local Government Board; while those passed for "the good rule and government of the

[1] This common law rule has been incorporated in section 182 of the Public Health Act 1875.

[2] *Vide* Public Health Act 1875, sec. 184. The same section provides further that notice of intention to apply for such confirmation must be advertised in a local newspaper at least one month before, that a copy of the proposed bye-law must be kept for public inspection at the office of the local authority during the same period, and that the clerk must furnish any ratepayer who applies for it with a copy, on payment of 6d. for 100 words.

[3] *Vide* P.H.A. 1875, sec. 187.

borough" remain rather more free from departmental control, being subject to section 23 (4) of the Act of 1882, which runs as follows:—

> Such a bye-law shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of her Privy Council, disallows the bye-law or part thereof, the bye-law or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time.

Accordingly, in theory at all events, the only administrative authority which can disallow a bye-law made under the above section is the Privy Council—that is to say, the Cabinet, though in practice such disallowance (which is not unusual) depends on the Home Office. These bye-laws for the good rule and government of the borough can only be made at a meeting of the Council which is attended by at least two-thirds of the whole body, and may not come into force until the expiration of forty days after a copy thereof has been fixed on the Town Hall.[1] Any offence against any bye-law may be prosecuted summarily—that is to say, action may be taken for the recovery of the penalty in a Court of summary jurisdiction, before two or more Justices of the Peace in Petty Sessions or a Stipendiary Magistrate.[2] It is important to notice that these proceedings may be defended by questioning the validity of the bye-law on any of the grounds above mentioned, and cases are of frequent occurrence in which a court of summary jurisdiction has found against the prosecution on the ground that a bye-law is illegal, or unreasonable, or in excess of the powers granted by Parliament. When this happens, the Town Council will appeal by special case stated, or will withdraw or amend the bye-law.

The bye-laws which have to be made by urban sanitary authorities for the purpose of carrying out the laws of public health are so numerous that the Local Government Board has published a comprehensive series of model bye-laws for the guidance and assistance of local sanitary authorities, and with

[1] *Vide* M.C.A. 1882, sec. 23 (2) and (3).

[2] Cf. P.H.A. 1875, sec. 251; and M.C.A. 1882, sec. 23 (5).

a view to facilitating its own work of supervision.[1] But the uniformity desired by the Board is not always desirable, nor is the attempt to enforce it always successful. The confirmation of a bye-law by the Local Government Board in no way prevents its validity being questioned in the ordinary courts. Attempts to invalidate bye-laws have often been made on the ground that the bye-laws are not reasonable.[2] The question as to what is reasonable is not an easy one to decide; and it has recently been held in an important decision (referring, however, to a County Council) that magistrates ought to assume that the rule laid down by the local authority is a reasonable one unless a very strong case is made against it. In the words of Lord Russell: "The bye-laws must not be unreasonable. If, for instance, they were found to be partial and unequal in their operation, as between different classes, if they were manifestly unjust, if they disclosed bad faith, the Court might well say, Parliament has never intended to give authority to make such rules. They are unreasonable and *ultra vires*."[3] This important judgment is certainly favourable to autonomy and likely to discourage the minor courts from rashly setting up their own opinion of what is reasonable against that of any local authority of county rank. It should perhaps be added, although it might have been assumed without any express decision, that local authorities are bound by their own bye-laws and may not dispense with them, for the bye-laws are assumed to be made for the benefit of the public.[4] Finally, it may be pointed out that the statutory conditions which govern bye-laws do not apply to the standing orders of

[1] The Annual Report of the L.G.B. always gives a survey in tabular form of the bye-laws confirmed by it in the year under review (cf. Report for 1898-99, pp. 585-598). Model bye-laws add to the cost of building.

[2] *E.g.* a bye-law "that no person not being a member of Her Majesty's army or auxiliary forces, acting under the orders of his commanding officer, shall sound or play upon any musical instrument in any of the streets in the borough on Sunday," was held to be unreasonable and therefore invalid or bad, because it was not confined to cases in which a nuisance was caused (*vide* Johnson *v.* Corporation of Croydon, L.R. 16 Q.B.D. p. 708).

[3] Kruse *v.* Johnson L.R. (1898), 2 Q.B. p. 91; cf. later, vol. ii. pp. 79-83, where the bye-law in question will be found.

[4] Cf. *In re* M'Intosh and the Pontypridd Improvement Commissioners, 61 L.J.Q.B. p. 164.

municipal councils or to the "regulations" made by other local authorities. Standing orders and regulations cannot be disapproved either by an Order in Council or by the Local Government Board. It is to the ordinary courts of law that Englishmen look to curb, on the one hand, any mischievous use of local autonomy; and on the other, any unnecessary interference of the central departments in local affairs. At the same time the courts afford a sufficient guarantee that the regulations and bye-laws of local authorities will not conflict with the general laws of the land or unduly curtail the liberties of its individual citizens.

The words used in the Municipal Code (sec. 23) to confer on a Town Council the power of making bye-laws for the good government of a town are wide enough to cover the whole province of administration. The legislative (or quasi-legislative) powers of a Council are coextensive with its administrative functions. Its own standing orders and bye-laws may regulate all its activities. But as these activities —the *province* of town government—form the subject of our next chapter, the objects of quasi-legislation may here be very briefly dismissed.

First in order and importance comes the group of bye-laws relating to "police"—a wide term in English administration, for it includes the supervision of traffic and vehicles, the regulation of weights and measures, etc. etc. But the right of raising and managing the police force itself and of laying down rules for its management, which resides in the Town Council and the Watch Committee, is the function of all others most significant of the supremacy enjoyed by a Town Council within the municipal bounds. It is, as it were, the crown of municipal autonomy, and gives to a Town Council, in the fullest sense, the *Stadtsobrigkeit* (the magisterial authority) of German administrative law.

It is necessary to lay stress on this aspect of English municipal law, because it enables us to see clearly that the English municipal borough is not like an "urban state district" of continental administrative systems, which is qualified as a "self-governing body" for a more or less restricted participation in the work of a State-directed local government. On the contrary, the English borough appears as possessing,

independent of central administration, the full public authority given by the law to preserve order and to promote the welfare of the inhabitants within the borough's boundaries.

This power of making bye-laws or ordinances belongs to the Town Council not only in virtue of the Municipal Corporations Act, but also of the Police Clauses Acts incorporated in the laws of Public Health. But apart from what may be called the police bye-laws, the great body of quasi-legislation arises out of provisions of the Public Health Acts relating to the maintenance and cleansing of streets, the conduct of common lodging-houses, of markets, of slaughter-houses, of cemeteries, the regulation of dangerous trades, the sewering and repairing of streets, and the building and drainage of houses. The regulation of building in the boroughs is a task which on the Continent is ordinarily assigned to the central government; in England, however, it falls wholly within the authority of the Town Council to adapt the general law to local needs. With the regulation of building lines is associated the duty of regulating the breadth of streets and of providing squares and open spaces. Parks and public gardens form another chapter in the statute-book of quasi-legislation. But it would be almost impossible to enumerate all the objects for which bye-laws are framed; for every supplement to the Public Health Acts and almost every new bit of permissive social legislation, as well as countless local Acts, add year by year to the multitudinous services which require the exercise by the Town Council of its quasi-legislative powers.

Having thus completed our account of the Town Council as a legislator, we are able to distinguish clearly two categories in the exercise of this power. The one, consisting of standing orders and regulations, is introspective and has regard to the internal organisation of the Council and to the control of its committees, officials, and servants—in a word, to the lines upon which administration itself must run. The second category looks rather at the objects than the organisation of government, for bye-laws bind equally all persons within the borough boundaries. Two legal distinctions serve to mark off one category from the other. Bye-laws, unlike standing orders, are in every case enforceable by penalties, and, unlike them, are in some measure subjected to the control of the central

government. The second of these distinctions deserves particular emphasis because of the important constitutional consequences which flow out of the immunity of standing orders from central control. It has already been shown that no department of government has any voice or share in municipal elections. A Town Council is constituted by the burgesses without any interference from the State. We have now to add that the representatives of the burgesses thus freely elected are equally free to organise themselves for their administrative work, simply because Parliament has declined to grant any kind of supervisory control over their standing orders to any department or any minister. This important point once explained and appreciated leads directly to the solution of the third remaining problem of municipal organisation in England—the problem of the relationship which should subsist between the permanent executive of paid officials on the one side, and the Council with its unpaid committees on the other. But this problem, like the previous one, will be the better understood if a glance be first taken at the methods adopted for its solution in Germany and Austria.

The relation between the Council and its officials.

The Prussian Municipal Code, which hands over the actual work of government to an executive magistracy with a Burgomaster at its head, responsible to and dependent upon the Crown, has this consequence, that it leaves the officials and servants of the municipality under the mediate and indirect control of the State, and, above all, subjects them to the courts of administrative law established by the State for the discipline of its officials. The Austrian system of municipal government, on the other hand, which makes the Burgomaster responsible to the Council, and regards the municipal officers as the servants of the Burgomaster, has a different effect. In the towns governed by their own local statutes, the magistracy is, according to the letter of the law, comparatively independent of the Council, but in practice its subordination to the Council is secured because the Burgomaster, who is the free choice of the Councillors, is also chief of the magistracy. It follows that neither in the small nor in the large towns of Austria are the officials of a municipality either directly or indirectly servants

In Germany and Austria.

of the State. The indirect head of a municipal service is the Council, its direct head is the Burgomaster; and the officials of an Austrian municipality are subject to the regulations made by the representatives of the inhabitants, and not to a disciplinary code imposed by the central government of the State.[1] Returning now to the English Municipal Code we find that it has, in full harmony with its fundamental principles, placed the paid officers and servants of the borough under the Town Council and its committees, regarding them simply as the executive instruments of a local autonomy. Here, too, the political conception of democratic self-government is carried out to its full legal consequences. The Act of 1882 gives the Town Council an absolutely free hand as regards the appointment and dismissal of its various officers, and as regards the organisation and pay of the whole staff. Nor is the Council at all hampered or circumscribed by any form of central control. After providing for the appointment by the Council of a Town Clerk and Treasurer the Act continues: "The Council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the Council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed." Moreover, "the Council shall require every officer appointed by them to give such security as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable."[2] The law, therefore, gives the Borough Council absolute freedom to appoint, pay, and control its officers as it thinks best, and to dismiss any one of them at any time without explanation or allegation of misconduct. This almost tyrannical freedom implies what is a main idea of the English municipal code, that the burgesses and their representatives alone form an integral part of the municipal constitution. The paid officials appointed by the Council

Under the English Municipal Code.

[1] Cf. Schön, *das Recht der Kommunal Verbände in Preussen*, p. 147; article "Städte," by Brockhausen, in the *Oesterreichisches Staatsworterbuch*, vol. iii. p. 1133.

[2] *Vide* M.C.A. 1882, secs. 17-20. Section 17 provides for the Town Clerk, section 18 for the Treasurer (who must not be the same person), section 19 for the other borough officers, and section 20 for security and remuneration (cf. for "Security," P.H.A. 1875, secs. 194, 195).

enjoy no special rights. The object of the code is to establish the relationship of master and servant between the Council and its officers.

The municipal officers.

Besides the offices of Town Clerk and Treasurer, which every borough must have, most boroughs appoint other officers and servants for the various branches of administration. In the large towns, and indeed in all those which have extended the range of their activity by private and adoptive Acts, the permanent staff attains almost the dimensions of an army. Its financial supervision and pay is in the hands of the Accountant, who is charged with the book-keeping and with the management of the current accounts of income and expenditure. Then at the head of the roads department comes the Borough Surveyor. In the smaller places the Surveyor has to look after buildings as well. In larger towns a special officer is appointed for that purpose. Towns with their own waterworks, tramways, gasworks, and electric light have, of course, a paid officer technically qualified, with a staff of assistants and workmen to look after each. Besides these, and often in a peculiarly independent position, stands the Medical Officer of Health, with inspectors of nuisances and sanitary inspectors working under his orders. Another officer who, for reasons to be further explained, also holds a special position, is the Head Constable, the chief of the borough police. These are the principal departmental chiefs who correspond to the standing committees. They are all appointed "during the pleasure of the Council"; and every incident of their service—their pay, their holidays, their pensions, their hours of work—is absolutely regulated by the Council. The rules laid down in the municipal code are very general in their nature. They forbid a member of the Council to hold an official post under the Council. It is specially provided that the Town Clerk shall hold office "during the pleasure of the Council," shall have charge of and be responsible for "the charters, deeds, records, and documents of the borough," that the Council may appoint a deputy in case of the Town Clerk's illness or absence, and that "a vacancy in the office shall be filled within twenty-one days after its occurrence." [1] Every officer of

[1] M.C.A. 1882, sec. 17, ss. (2)-(6). The last is an absurdly short period.

the Council is also bound by statute, either during his office or within three months after ceasing to hold it, to deliver at the direction of the Council a strict account (with vouchers, etc.) of all matters and monies committed to his charge, and to pay all money due from him to the Council as the Council directs. If he refuses, or wilfully neglects to comply, the local court of summary jurisdiction may require him to do so by summary order.[1]

With these exceptions, the Act of 1882, so far as it deals with the municipal service, is no more than a delegation to each Borough Council of power to appoint, pay, regulate, and dismiss such a staff of officers and servants as it deems necessary. Such powers of appointment and control of certain sanitary officers as the Local Government Board possesses under the Public Health Act will be described in a later part of this work;[2] but even there the power of the Board is not felt in the municipal organisation. The same is true of the similar, though by no means identical, control wielded by the Home Office over the borough police. The police force is thoroughly municipalised; for in practice the Council through the Watch Committee has entire control over the police.[3] More interference is to be apprehended from the magistrates than from the Home Office, for technically any two of the borough magistrates may dismiss a constable or even a chief constable, just as the Town Council and Watch Committee may do so, without assigning any reason. The magistrates also have a right to call in soldiery to preserve the peace; but in practice they would be wise to consult the Watch Committee before so doing, as the Watch Committee alone has funds out of which to pay the expenses.

The Local Government Board and Home Office.

The control of a Council over its staff is usually exercised by means of its own rules and regulations laid down in bye-laws and standing orders; and secondly, through

[1] M.C.A. 1882, sec. 21. But this special provision does not exclude ordinary remedies.

[2] See Part III.

[3] The words are Sir Samuel Johnson's. Royal Commission of 1894. Minutes of Evidence, Q. 9635. This arrangement is open to criticism on the ground that it may be difficult to get the police to prosecute servants of the corporation for breaches of its own bye-laws.

the committees, each of which may, and must, of course, in practice, prescribe for its own officers and servants. But in order to understand properly the position of a municipal staff that of its *de facto* chief, the Town Clerk, must be grasped.[1] The Town Clerk is, as before observed, one of the two officials whom a Town Council is obliged by law to appoint.[2] It is desirable if not absolutely necessary for a Town Clerk to have had a legal training; and he is generally a qualified solicitor, sometimes a barrister. The municipal code seems to regard him primarily as the legal adviser of the Council, as well as the chief of the staff and keeper of the archives. Any important business with government departments or other authorities goes through his hands. He has also to manage, under the directions of the Parliamentary Committee, the conduct of such local Bills and Provisional Orders as may be required. He has, moreover, to look after not only all the legislation, but also all the litigation of the borough. Under his direction briefs are prepared, and counsel employed, in all cases and prosecutions to which the borough is a party. Another important series of functions is assigned to the Town Clerk in connection with the election and constitution of the Council; he has to revise and sign the burgess-roll, and to see that all the statutory notices are duly published, including the summons to meetings of the Council and of committees. Many other similar duties are imposed upon him by standing orders in the different towns.

The Town Clerk.

In other respects also the Town Clerk is evidently esteemed the chief official of the staff; he is as a rule the best paid official—his salary rising in large towns to upwards of £2000; in small towns, where his duties are light, his pay is comparatively small, and he is often allowed to increase it (if he is a solicitor) by private practice, which, however, must not be of a kind to conflict with the duties of his office. The office of Town Clerk offers a good social

[1] Cf. for the Town Clerk's legal position and statutory functions, the M.C.A. 1882, secs. 17, 20, 21, 28, 43, 45, 48, 49, 54, 60, 66, 75, 88, 99.

[2] Before the reform of 1835 the office of Town Clerk was in many boroughs a freehold office, tenable for life, with rich perquisites attached. The appointment of a Town Clerk was made obligatory by an amendment introduced into the Bill, and passed by way of concession to the Tory opposition.

position, although social considerations do not usually enter into his appointment. His tenure is during the pleasure of the Council, which means that he may at any time be asked to quit his post after three months' notice; but, except in very rare cases, his tenure is practically for life, or at any rate for so long as he is equal to the performance of his duties. Consequently the Town Clerk may be regarded as the most stable and permanent element in English municipal government; for after holding a central position for many years, he is, as it were, the living embodiment of the local traditions of government, and his opinions are naturally regarded by his Council with the greatest respect. He attends all sittings of the Council, and has also the right of audience, though it is not customary for him to speak unless called upon by the Mayor. In the smaller towns he also attends committee meetings with great regularity; in the larger, except in the case of some specially important business, this duty is usually undertaken by the Deputy Town-Clerk, or one of his assistants, of whom there are sometimes as many as five.

All the strings of administration are gathered in the Town Clerk's hands; in his own office he is of course the official chief, although as regards its organisation and the payment of his clerks he is subordinated to the Finance Committee. His influence as the chief of the executive over the general work of the committees depends, of course, very much upon personal considerations; but it is always great. This brings us to the hinge upon which the actual administration turns, viz. the relationship of the unpaid committees to the paid staff. Almost every standing committee has corresponding to it one or more paid officials and servants. On the one hand, there is the well-acknowledged principle that each branch or department of the administration is completely in the hands of a committee, with full power to make general and special rules for the guidance of its officers and servants, so that the chairman of a committee controls the whole of one branch of the administration. But there is also another principle almost universally accepted, that the duties of a committee and its chairman are confined to the committee

The Committees and their officers.

room. Only in cases of pressing necessity would the chairman of the committee give direct orders to its officers, or himself make an order for payment on the borough treasurer. The rule is that all the orders of the committee pass through the Town Clerk's office; he and his assistants take down in writing the resolutions passed and the orders given by the various committees. These are called minutes, and are carried out as such by the officers concerned.[1] This is the rule of the Nottingham Council, and there is a further rule of still more general acceptance, that the chairman of a committee has to act through some official in his department. "We do not admit," says Sir Samuel Johnson, speaking of the Nottingham practice, "that the chairman of a committee has any authority—scarcely any authority—except in cases of emergency, outside of his committee room." The Town Clerk then is the channel through which the whole business of the Council flows. It is his principal duty to keep a close watch and a firm grip on every branch of the administration. He it is who knows best what will be the general effect of any given action of a committee; and, therefore, it is customary for a chairman of a committee to keep in touch with the Town Clerk to avoid friction with other parts of the machinery. The Town Clerk, therefore, is necessarily the confidant of all the committees, and more especially of those to which the more important officials are attached. He helps to define the functions and duties of the permanent officials, and to arrange any difficulties which may arise between them. He is consulted, and often exercises a decisive influence, with

Town Clerks on themselves.

[1] Cf. Royal Commission 1894, Minutes of Evidence, Q. 9546 *sqq.* "The relationship of the borough engineer to me," says the Town Clerk of Nottingham, "is that he comes to me in all cases of difficulty and confers with me. In any matter with which he is likely to be interested he attends, and hears what passes at a committee, but until it is reduced into the form of a minute, and is sent on to him as a minute, he has no authority to act."

Cf. *Year-Book of Sheffield for* 1899, pp. 150-158, as an example of the departmental organisation of a large town, where 300 officers are apportioned among 18 departments. As an example of a small town, Banbury with 13,000 inhabitants may serve. This has a Town Clerk, a treasurer, and the following officers, besides subordinates:—A surveyor, who is also an inspector of nuisances, accountant, medical officer of health, farm manager, superintendent of police, coroner, school attendance officer, collector of rents, hall-keeper, cemetery-keeper, veterinary inspector.

regard to appointments, dismissals, and the pensioning of members of the official staff. The regular organ of communication between the different departments, the representative of the whole body of officials before the Council, he brings to a head the hierarchy of officials, and provides the Council with all the information and expert advice which they require. In short, he serves as a link between the Council, the committees, and the official staff. It is a difficult position, which requires much tact, circumspection, loyalty, and business ability.

The position of the official chiefs of particular departments is quite independent of that of the Town Clerk, in so far that they are not in any way subordinated to him by the rules of the service. On the contrary, every permanent head of a department is subordinated only to his committee, and through it to the Council. It is the central position of the Town Clerk, his influence with the committees, his comprehensive knowledge and experience, not any definite or legal superiority, which makes him the head official of the town. He is the adviser-in-chief; and that is the function above all others which makes him a person of such importance in the municipal life of England.

The evidence of the experts examined by the Royal Commission of 1894 clothes the skeleton Town Clerk of the Municipal Corporations Act with flesh and blood and life. This evidence—together with the standing orders of many boroughs—has helped us to draw him at full length; but there is one passage taken from the answers of Mr. Clare, at that time Town Clerk of Liverpool, which deserves to be reproduced:—

"I think it is an extremely good thing for the Corporation's service to have one man at the head of everything who should have a sort of general supervision and control of the whole of the business of the Corporation. The result is, that when the head of one department, say like the engineer, comes with some scheme in connection with engineering, and confers with you, you may be able to point out to him that in some way or other he is affecting another matter which is in another department, which did not occur to him probably at the time, and so on. And then there is the question of the general policy of doing this, that, and the other, and when it shall be done, and the Town Clerk practically in that way forms a sort of nucleus there, to which all the other officials come, whenever they want any advice or assistance. Then, in addition to that, the chairmen of committees confer with me

on matters of any importance before the committees meet, and we discuss the subjects together, and decide how the thing should be done, and what ought to be done. Then the result of it is, that when matters come before the committee, the chairman and officials are usually of one mind as to what is the right course to pursue with regard to any particular matter; and in that way you get, I think, a very good administration, because you do not get the chairman coming in unexpectedly on a matter of which he knows little or nothing, and taking a different view to that of the officials who are advising the committee" (Minutes of Evidence, Qu. 10,319). And again: "The Town Clerk's business is, of course, to start with, theoretically legal, but practically technical law is a small part of his real work. His real work is to endeavour to give the best advice he can to anybody, whether it is a member of the Council or an official, on questions either of policy or of law" (Qu. 10,323).

The Town Clerk has been described metaphorically as a "conduit pipe," through which the will of the Council and its committees flows into execution. He is also, to continue the metaphor, the reservoir into which a watershed of information pours and again distributes itself, coloured perhaps, but, let us hope, improved by advice to those who ask for it. What is the amount of influence which the experience and judgment of the Town Clerk has upon the will of the body he serves is a question that cannot be answered in terms of a municipal statute. It depends partly on the spirit and capacity of the Council and its committees, partly on the ability and character of the Town Clerk. That in almost all English towns the position of the Town Clerk is much sought after, that his function is generally regarded as very useful to the community, that he usually works smoothly and harmoniously with the Council, are indications that under present conditions his office provides the happiest possible solution for the difficulties with which the necessity for a staff of permanent officials besets every system of genuine local self-government.

The Chief Constable or head of the borough police holds, as has already appeared, a peculiar position among the officers of a municipality; indeed, the whole system of police administration stands by itself. The Chief Constable is appointed by the Council, paid by the Watch Committee, and in law is dismissable either by the Council or by the magistrates. The functions of the

The Chief Constable.

Watch Committee, the magistrates, and the Chief Constable will be best understood by a concrete example. Supposing there is likely to be a serious disturbance of the peace in a borough. The Chief Constable will report to the chairman of the Watch Committee (who summons the Watch Committee), and also to the Mayor as chairman of the borough bench, who thereupon summons the magistrates. Both bodies appoint certain of their members to serve together on a joint committee; and this joint committee then decides what is to be done and instructs the Chief Constable accordingly. This is an actual example (taken from Nottingham) of the way in which a serious practical difficulty created by the Municipal Corporations Act is solved.[1] The Chief Constable's duty is to maintain order and detect crime. He is generally allowed to dismiss and appoint constables on his own authority. But he reports these and all other matters of importance to the Watch Committee, which can reverse his decision, and would do so if he did not exercise his powers with discretion. The Watch Committee concerns itself mainly with such questions as the increase of the force of constabulary, the provision or enlargement of accommodation, the regulation of wages, the provision of clothing, etc., and generally with all police matters involving expenditure. The Chief Constable in a borough has not quite so independent a position as the Chief Constable in a county. Still the Watch Committee seldom interferes, except to lay down some general policy such as the suppression of houses of ill-fame, gambling resorts, or night clubs. But as a matter of law and constitution, the Chief Constable's authority is very nearly the same as that of every other municipal official—that is to say, he has to act on the instructions of his committee.[2] It is really the multitude and technical character of his duties as director of police, and the frequent necessity for secrecy that give him a position of greater independence than that of the other officials. Generally speaking, he is not allowed to initiate prosecutions or legal proceedings without the previous sanction of the Watch Committee, which would have to provide the

[1] The police are under the control both of the Watch Committee and the magistrates (cf. M.C.A. 1882, sec. 158).

[2] Cf. Royal Commission on Amalgamation, etc., Q. 10,416.

necessary costs. Perhaps the only cases in which the system gives rise to serious difficulties are those in which it is necessary for the police to attack financial interests represented on the Watch Committee, or for that matter on the borough bench.[1] This is particularly the case in the province of the liquor traffic, which has long been a wealthy, well-organised, and powerful trade in England, and has at the same time been subjected by law to the special supervision and control of the police. In the smaller towns, where the pressure of public opinion is less strong, there is the greatest danger that the activity of the police in carrying out the licensing laws will be seriously embarrassed by the influence of the drink interest, the various branches of which—the licensed victuallers, the brewers, and the distillers—are often strongly represented on the Watch Committee, and still more strongly on the bench of magistrates. The evidence given before the Royal Commission of 1897, presided over by Lord Peel, showed that in many cases the good intentions of the Chief Constable have been frustrated by these interests, or—what is still worse—that the police have been corrupted; and these evils have been possible, mainly because the Chief Constable is ultimately dependent on the goodwill of the Watch Committee, which, in conjunction with the Council, has the sole "power of the purse." It is impossible in any town, large or small, absolutely to eliminate the influence of private interests upon public administration. It has happened, and not seldom, that the Chief Constable has been denied by his Watch Committee the sums necessary to prosecute offences against the law committed by the occupiers of public-houses.[2] For these reasons it

The police and the liquor traffic.

[1] See next chapter.

[2] Cf. Royal Commission on Amalgamation, etc., Minutes of Evidence, Q. 9635-9680, on the general position of the Chief Constable; where secrecy is necessary in some matters, the Chief Constable — says Sir Samuel Johnson — usually consults the Town Clerk rather than the Chairman of the Watch Committee. On the evil influences of the drink interest over Watch Committees, cf. the very interesting evidence given before the Royal Commission on the Licensing Laws (1897), Minutes of Evidence, 17,025-36, 17,041, 17,076-81. The Chairman of the Watch Committee in the town of Penzance advocates a change in the law to empower the Chief Constable "to act entirely as a man independent of the Watch Committee or the Council in the matter of prosecutions." On the exertion by the Watch Committee of its influence in favour of licensed victuallers, the

has been repeatedly proposed that in future all members of the Council directly interested in the liquor trade should be prohibited from serving on the Watch Committee: a rule, however, which would have too little practical effect, because it is the indirect interest of members holding shares in brewery companies which own licensed houses, and otherwise, that so often gives predominance to the liquor interest on the Watch Committee, and does the mischief. On the other side, the violent efforts of the teetotallers in many places to influence the Watch Committee helps to give a party colour to the subject, and to make it still more difficult for the police to enforce the licensing laws with strict impartiality. Herein lies one of the great difficulties of democratic government, that an administration, which actually rests and depends on the participation of the masses, is necessarily hampered in carrying out the law by private and conflicting interests. Against such difficulties no sufficiently elaborate statutory precautions and no strong supervision on the part of the central authority exist in England. Good government assumes and relies upon the probity of the majority, the publicity of the whole administration, and the control exercised by public opinion. In spite of its admitted faults in many English towns—and some consider that Home Rule in police matters is one of the least satisfactory elements in English municipal institutions — public opinion, that main weapon in the arsenal of democracy, has hitherto worked with wonderful success to prevent any large growth of actual corruption.

The position of the borough police and its head is further complicated, as we have seen, by the powers of the borough Justices, which are so far co-ordinate with those of the Watch Committee that a joint committee is often necessary to

Chairman of the Watch Committee in Devonport, who was naturally anxious to defend his committee, admitted that the Watch Committee there refused to allow the Chief Constable to proceed with twenty-seven out of forty cases in which he proposed to prosecute licensees (Minute of Evidence, Q. 34,661-34,662). Similar instances are given in the cases of Wigan, Reading, Derby, Portsmouth, etc. Some allowance may no doubt be made for the fact that this evidence was often given by the Temperance party, whose zeal against the drink traffic deprives their statements of objectivity. But even so, the evidence taken by the Commission gives an unpleasant picture of police administration in many of these towns.

arrange common action between the two authorities in cases of disturbance. There is, however, seldom any friction between the committee and the bench, and if any should arise, the Mayor, as a member of the Watch Committee and chairman of the magistrates, helps to smooth it away. His position leads naturally to his being elected chairman of any joint committee which may from time to time be necessary. The magistrates, it should be observed, are not a spending authority, and have really little or nothing to do or say to the management of the police; but if an extraordinary occasion should arise and make it necessary to collect a force of special constables, or to call in the military, the magistrates are the lawful authority, though in practice the aid of Watch Committee is needed in order that its sanction may be obtained for the necessary expenditure. It must always be remembered that in England (outside London) and in Scotland, though not in Ireland, there is no such thing as a state police or a royal constabulary, and that the central government has no right to give orders to the local police. Only by corresponding with the local police authorities (the watch committees in the towns, the standing joint committees in the counties) can the Home Secretary bring about any given action on the part of the police; nor can he do so even then unless the local authority is willing to take action at his suggestion. Such cases often arise when it is necessary to watch foreign anarchists or dynamitards; and it is usual for the Chief Constable to report to and ask the advice of the Home Department when an emergency arises which may require any extreme step such as that of calling out the military.[1]

The Watch Committee and the Magistrates.

In spite, however, of this municipal autonomy, the whole administration of the police in every town is subject to the influence of the central authority in a peculiar and rather roundabout way through the system already explained of grants-in-aid. About half the cost of the police,[2] both in the boroughs and counties, is now defrayed by the State, subject

[1] Cf. Debate in House of Commons, August 1901, on Penrhyn disturbances.

[2] For a more accurate and detailed statement of police finance, see vol. ii. sub. Home Office and Sir Henry Fowler's *Parliamentary Return on Local Taxation*, No. 168, April 1893. The only grant which is now paid directly to the provincial police authorities is an annual sum of £150,000 for police superannuation.

to the condition that all the local police forces shall be annually inspected by the Home Office, and their efficiency and strength approved. If a town renounced its grant, the right of inspection would cease; but, except in that almost inconceivable contingency, the assignment of the grant depends upon the town attaining a standard of efficiency adequate to the requirements of the Home Office. The anxiety of the ratepayers to earn the grant makes it certain that the local authority will try to keep its police up to the standard requisite; yet the Home Office, though it can apply this powerful but indirect stimulus, cannot be regarded as a police authority in the Continental sense. The Ministry alone has the right upon the Inspector's report and certificate to refuse the grant. Neither the Ministry nor Home Office can take any direct step to reform a local police establishment. The central authority can sconce the ratepayer, but it cannot take over the management of his police. The representatives of the ratepayers,—that is to say, the Council and the Watch Committee,—remain in law the supreme police authority of the town, even though in fact their supremacy is regulated and their energies strung up by the enlightened cupidity[1] of their constituents.

There is one side, however, of the work of the Chief Constable and the Watch Committee which is subjected to a very real control. If the State can apply an administrative stimulus, the Courts of Law are constantly exercising their superior powers. All complaints and prosecutions brought by the police come before the magistrates and are subject to appeal. Moreover, actions may be brought against the Chief Constable for malicious prosecution. Any order for payment of the cost of a prosecution may be removed into the King's Bench Division of the High Court of Justice and quashed, which indeed was actually done in a well-known case.[2] We shall have a later opportunity of discussing the legal aspects of municipal administration; but the freedom and independ-

[1] The Home Office often threatens to use its powers. Thus, in 1899, Glasgow and Manchester, the second and fourth largest towns of the United Kingdom, were in danger of losing their grant through inefficiency.

[2] R. *v.* Mayor of Exeter L.R., 6 Q.B.D. 135, where the decision of the Court was given on the ground that costs arising out of misuse of official power were not "legal purposes" within the meaning of the law.

ence conferred upon the individual citizen by this superiority of law over police and of courts over constables are boons more easy to ignore than to overestimate.

Our picture of the municipal civil service will be completed by some remarks on the method of appointing and paying the officers and servants of a municipality. It will be seen how here too the three organs of administration—Council, Committee, and permanent officials—work together in practice. In this matter it is necessary to look at concrete instances and individual towns, because the municipal code is absolutely silent, the appointment of all officials and organisation of all branches of the service having been, as we have seen, left entirely to the discretion of the Borough Council. But as the needs and the conditions of life in all English towns are remarkably similar and the laws to be administrated—private Bill legislation excepted—are the same, there is comparatively little variety in the organisation of the municipal service. The salaries of the officials naturally rise or fall with the size of the town and the extent of their work. According to an estimate prepared by the Municipal Officers Association [1] in 1898 the average pay of a municipal official is somewhat more than £100 a year. The salaries of the chief officials are always high and generally rise steadily with length of service. The best Councils are always anxious to attract and keep good servants by good pay. Town clerks, borough surveyors, borough engineers, and first accountants receive in county boroughs of from 50,000 to 100,000 inhabitants, salaries ranging from £400 to £1000, or even more. In the great cities they rise to double or almost treble the amount. The appointment of officers is always subject to the approval of the Council, but it is practically made by the committee concerned, at the suggestion of its chairman or the Town Clerk. In great cities the committees are allowed authority to appoint their own smaller officials and servants. Thus in Manchester committees may confer appointments up to 63s. a week, in Liverpool up to

Salaries of municipal officers.

[1] As the Town Councils have an association to look after and forward their common interests in Parliament and elsewhere, called "The Association of Municipal Corporations of the United Kingdom," so their officials have a "Municipal Officers Association," which meets yearly to watch over their interests and ventilate their grievances.

£104 a year.[1] All important vacancies are advertised; but there is not as yet any system of examination for the municipal service such as that which has been established for nearly all branches of the imperial service. However, the old system of patronage has begun to die out, and there is generally a healthy inclination to choose the most competent of the candidates available for any important post. In the larger towns the heads of departments have to submit to the Council, through their committee, a summary showing the numbers and pay of their staff and the changes that have been made during the year.[2] One of the most difficult problems, that of superannuation and pension, is still unsolved. At present there is no general law of pension applying to the whole municipal service, though the Police Superannuation Act of 1890 provides for the constabulary. By this Act every constable and police official is entitled after not less than twenty-five years' service to a pension not exceeding two-thirds of his salary. The absence of any such provision for other branches of the service is undoubtedly a defect in the municipal code, and one which is felt more and more by the increasing thousands of municipal officers in England. To provide a remedy is one of the chief objects of the Municipal Officers Association. Many attempts, such

Superannuation and pensions.

[1] Cf. Liverpool Standing Orders 57; Manchester Standing Orders 15.

[2] Cf. Liverpool Standing Orders 59. Reports on increases of salary are usually made yearly (in Manchester, *e.g.* in February). A summary of the more important salaries paid in a large and a small town follows, the information being drawn in each case from the official year-book (1899):—

Sheffield.—Stipendiary Magistrate, £1000; Magistrates' Clerk, £2300; Recorder, £200. Town Clerk, £1150; First Assistant, £400; Second Assistant, £250; Chief Constable, £650; Deputy-Chief Constable, £300; Chief Librarian, £300; City Accountant, £850; Chief Clerk and Cashier, £320; Chief Rate Clerk, £180; City Surveyor, £1000; Deputy-Surveyor, £350; Medical Officer of Health, £600; Cleansing Superintendent, £275; Manager of Tramways Department, £400; Electrical Engineer, £425; General Manager of Waterworks, £1000; Engineer, £600. In 1899 the city of Sheffield was enlarged, over 4000 acres with a population of about 28,000 being added. At the end of 1902 the estimated population of Sheffield was upwards of 420,000; and since 1899 the salaries of many of the principal officers had been raised.

Banbury will serve as an example of a small town:—Town Clerk, £300; Clerk to the Magistrates, £210; Surveyor, £200; Accountant, £150; Medical Officer of Health, £50; Farm Manager, £100; Superintendent of Police, £185; School Attendance Officer, £45; Cemetery Keeper, £75.

as the Local Authorities Superannuation Bill of 1899, have been made to obtain legislation, but without success.[1] In a considerable number of towns, however, it has been found possible in spite of the want of any statutory basis to establish systems which practically provide old age pensions. Liverpool obtained a local Act for the purpose in 1882. Under that Act the Corporation of Liverpool "took power to do legally what they used to illegally—that is to say, to grant superannuation allowances, or to make a grant to the widow of any officer dying in the service."[2] The pension scheme under the Act was arranged in 1893, and had two main features: (1) to encourage officials to remain in the service of the town; (2) to make it easy for the Council to require officials incapable of work to retire. All the officials are bound under this scheme to pay 3 per cent of their salaries into a superannuation fund, and are required in addition to show that they have insured their lives to the extent of 2 per cent of their salaries. In return the Council guarantees the pensions. The superannuation scheme includes all men appointed in an established capacity who can fairly be called officers. Thus it includes water inspectors and all clerks, but not day-labourers. The question of enabling ordinary labourers to participate in the benefits of the superannuation clauses of the Liverpool Act of 1893 was under consideration at the time when Mr. Clare gave his evidence on the subject.[3] It has since been decided in the negative. Birmingham and many other towns have obtained powers from Parliament to enable them to establish similar schemes, or at any rate to make payments from time to time to old servants whom it has been found necessary to discharge. The utility of these schemes, both to the public service and to its officials, seems to have been proved beyond a doubt by experience, and it is likely that no long time will elapse before Parliament

[1] This Bill did not get further than its second reading.

[2] So the Town Clerk of Liverpool in his evidence before the Royal Commission on Amalgamation, Q. 10,329, 599.

[3] Royal Commission, Minutes of Evidence, Q. 10,254. For the Livervool scheme see also Liverpool Standing Orders, 64-66. Nottingham has no pensions, but never discharges an officer. If it discharges an old servant he is given "nominal employment." The plan seems primitive. See Royal Commission, Minutes, Q. 9578 *sqq.*

will impose a general scheme upon all municipalities, in order that municipal servants like the servants of Poor Law and police authorities may look forward to a pension as the reward of a long term of good service. No doubt the real reason why such a general scheme has been so long delayed is that a whole army of workmen will expect to be included in its benefits, and it will be difficult for a democratic Parliament to refuse to one set of servants (the neediest and most numerous) what it gives to the other. The difficulties of the problem thus extended are large; but its importance is overshadowed by the vast proposals for a universal system of old age pensions which have already appeared as a plank in the platform of certain prominent politicians.

Looking back over the whole organisation of municipal government, which we have now described in all its branches, certain general conclusions need to be enforced. The life and work of a municipality result from the association of three factors—the Town Council, its committees, and its permanent officials. The officials are the purely executive organ; they take their orders from the committees, which are the administrative organ proper. These, again, are under the regular control of the Council, which exercises a general supervision over administration, and decides all important questions both of policy and of organisation. Technically, then, the Council may be described as the deliberative organ, the committees as the specialised organs of administration, the permanent staff as the executive which carries out the actual work of government. But such a distinction between the deliberative, administrative, and executive must not be taken to imply that there are three water-tight compartments in municipal government. On the contrary, the Town Council alone, the full meeting of the direct representatives of the burgesses, may itself in the last resort interpret and carry out the independent will of the community. The smallest detail of executive management may be brought before the Council for final decision. The division of government into three factors is very popular in England, but it is certain to lead to misconception and error if it be regarded as anything more than an abstract analysis of an indivisible activity. If the three functions of a muni-

The triple organisation of municipal work.

cipal corporation be treated as things really apart and distinct, as the separate activities of separate bodies, the same mistake will be made in the scientific study of local government which was made with regard to the central government in the famous doctrine of the division of powers so long promulgated by English and Continental constitutional theory.

Rightly to be understood the constitution of a town must be treated as an organic unity whose distinctions and differences are only external. It may be said to have members; but they are members of one body. Every act of administration has two ingredients—the ingredient of the will or motive force, and the ingredient of execution or instrumentality. A decision to act may theoretically be distinguished from its execution; but in the real world the whole process from the formation of the resolution to the carrying out of it is one individual act. From the nature of municipal institutions in England it follows that the first element is supplied only by the representatives of the burgesses in council or committee. And it is the motive force residing in the representative body and not the purely instrumental work of carrying their will into execution which forms the real basis and essence of municipal government. The will lies principally in the Town Council, only secondarily in the committee acting as its agent with delegated powers. True it no doubt is, that the practical work of administration is usually decided by resolution of the Committee, but it is equally true that the Town Council is free at any time to intervene and to refuse its approval, and thereby to nullify the decisions of the subsidiary body, thus substituting its own superior will for the expression wrongly given to it by an inferior agent. The Committees, it must always be remembered, are members of a body, limbs of the Council, not separate organisms yoked to the larger one; and not only is the Committee a member of the Council, but every member of a committee is under the Municipal Corporations Act a member of the Council. Again, not only is the Committee a condensed and specialised form of the Council, but even after a committee is formed the Council retains full power of initiative. If that power is, comparatively speaking, seldom exercised, it is because the Council recognises the special opportunities for forming a

Deliberation, administration, and execution.

right judgment possessed by the Committee and its staff in regard to its own particular branch of administration. Lastly, the Council is always able at its discretion to contract or extend the province of a committee, as well as to control its operations by general rules and by particular resolutions.

At the same time the Committees and their officials are far from being mere mechanical instruments of the Council. It is true that in the last resort the Council's decision is final. But it would be a mistake to picture the Council as the workman, and its committees, or even its officers, as the tools with which he works. Generally speaking, and in large towns almost invariably, a committee follows its own devices, and the superior body seldom interferes, except when some important question of policy or organisation has to be decided. Theoretically it would be easy for individual councillors to harass a committee and disturb its arrangements at the monthly meetings of the Council. In practice the theoretical difficulty does not arise. Every councillor is a committee man and recognises the necessity and desirability of reposing confidence in other committees than his own. Confidence begets a sense of responsibility. Confidence and responsibility are the keynotes of successful administration.

And lastly, the relationship of the Council to its committees is reflected in the relationship of a committee to its officers. Englishmen have no liking and no need for the Continental conception of an official as a superior being. Such superiority they see nowhere except in the Law Courts, in Parliament, and, for ceremonial and social purposes, in the King,—certainly not in persons appointed and paid by their own representatives in town or county to carry out and execute the laws. On the other hand, a municipal officer, though his position entitles him to no exceptional treatment from his fellow townsmen, may win himself the full and grateful recognition everywhere accorded in England to those who do useful public work, as well as the respect which expert knowledge and skill always command. The respect paid to the higher officials of a municipality and the confidence reposed in them by the committees, the Council, and the citizens at large, are due not to their official position but to their

character, their ability, and the importance of their work. It follows that the relations between the Council, its committees, and their staff are untinged by bureaucracy, and are characterised by those mutual feelings of loyalty and courtesy which mark the whole of English public life. An official is rarely, if ever, made the object of party recrimination; and if politics often have something to do with his appointment, and also, though very rarely, with his resignation, the motive is not openly avowed. Loyalty to constantly shifting political chiefs is indeed a characteristic mark of the Civil Service in England. It is understood that the political chief shall get the credit or bear the blame of any action taken by his department, and that he shall defend his subordinates when they are attacked. The influence exercised by the permanent official upon his ministerial chief—who in the case of a municipality is the committee or the Council—is often great; but it always depends upon the confidence reposed in him by the representatives of the people, whether acting in full meeting or in one of the many ramifications thrust out by the parent stem; and it is really this representative body, responsible to the burgesses but owning no other superior, which alone governs and administers the affairs of the town.[1]

[1] There is properly speaking no disciplinary law for the staff of municipal officials. The standing orders of a Council usually include a few provisions as to the duties of the various officers. An officer is also forbidden, as a rule, to travel to London on any Parliamentary or other legal business unless formally requested by a committee. He is also required to preserve silence with regard to proceedings at committee meetings not open to the public. If an official infringes rules such as these, the Committee or the Council is free to adopt such remedy as may appear suitable. An official may always appeal from a decision of the Committee to the Council (cf. *e.g.* Bournemouth Standing Orders, No. 148). All officials on the staff are given leave of absence for at least fourteen days in each year.

CHAPTER VII

THE SPHERE[1] OF MUNICIPAL GOVERNMENT

FROM a description of the mode in which a Town Council exercises its sway over municipal government we pass to the extent and objects of its dominion—in other words, to the functions and powers which a Town Council is permitted or compelled to exercise by law. If, however, a Continental jurist were to inquire, as he would naturally do, for some general and theoretic definition of a Borough Council's sphere of activity,[2] he would discover that such a conception is entirely foreign to English jurisprudence. It is true the Municipal Code speaks of "the good rule and government of the town," but no one would think of treating these words as a legal definition of borough business. There is no attempt in the Municipal Code to define and mark out the work of a Town Council, for the reason that English law is averse to abstract definitions, and also because a general conception of what is or is not municipal work does not exist. Rather has it been from time immemorial a principle of English law that incorporated towns, like all other corporations, have only such legal powers and duties as have been handed over by the express provisions of statutory law. Hence a panoramic view of municipal activity cannot be obtained by analysing an abstract definition of the administrative power handed over by a State to its towns, but only by piecing together the special powers handed over expressly to municipalities by the Act of 1882 and a multitude of other statutes. In so doing

[1] See for this chapter, M.C.A. 1882, Parts VI., VII., IX., XII., and P.H.A. 1875, Parts III.-V., and a mass of amending and supplementary legislation.

[2] *Wirkungskreis.*

a double distinction may be observed. First, with regard to the sources from which these powers flow; secondly, as regards the powers themselves—are they compulsory or permissive? If the powers are permissive they are again distinguishable into powers conferred by general (adoptive) Acts, and powers conferred by local Acts or Provisional Orders. Before coming, however, to the statutory authority of a Municipal Council there is a certain preliminary class of rights possessed by a Town Corporation at common law. The power of making bye-laws at common law, which has been described in the preceding chapter, is conferred and defined in the Municipal Code. There are besides the rights possessed by Town Councils, in common with all corporations at common law, of holding property, of borrowing and lending, of suing and of being sued. And with this last right of a Corporation is bound up the further power of prosecuting at its own expense those who offend against its own bye-laws. According to the modern Municipal Code this is a function of the police administration, with which, as we have seen, every considerable municipality is entrusted.[1] So far, then, all these functions of a municipal corporation existed at common law before 1835. The legislation of that year gave definite form to a group of old rights and brought them into beneficial operation. Indeed, nothing really fundamental in the constitution of a modern municipality is new; and that is why, when constitutional difficulties arise in connection with municipal institutions, they are often solved by going back to

Common law powers of Municipal Corporations.

[1] English criminal law knows nothing of the monopoly of public prosecutions possessed by the central government in continental states. Even yet Treasury prosecutions (instituted by the Attorney-General and Solicitor-General) are regarded as the exception. As Maitland admirably puts it: "We have public prosecutions, for any one of the public may prosecute; abroad they have state prosecutions or official prosecutions" (*Justice and Police*, p. 141). In indictable cases the person injured, or a police officer, is bound over to prosecute; and material witnesses, whether for the prosecution or the defence, are bound over to give evidence. Of late it has become the practice in many towns and counties to entrust particular solicitors with the duty of arranging all public prosecutions. Such, for instance, is the case in Liverpool, Birmingham, Manchester, Bolton, etc. For costs of prosecutions cf. Glen, *Law of Public Health*, vol. i. p. 596; also on the whole subject, Gneist, *Self-Government*, 1876; *Englisches Verwaltungsrecht*, ii. par. 124; Maitland, *Justice and Police*, p. 136 *sqq.*

the common law and the older cases decided before the Act of 1835.

Turning now from the unwritten to the written law, in our search for municipal powers, the first source is the Municipal Corporations Act of 1882. The work there imposed upon a Borough Council is a minimum and is wholly obligatory. Bit by bit a province is marked out which covers—to confine ourselves to the main points—the preservation of order in the borough, the whole management of police, the administration of town property, the laying and collection of a borough rate, and finally, the carrying out of all those functions which the old corporations or members of them in their corporate capacity had acquired through general or local Acts of Parliament. As a set off the Borough Council lost never to regain nearly all its judicial functions, which were in some places considerable. These are now performed by a borough bench wholly dissociated from the Council. But a further step most necessary for the establishment of a sound municipal system had still to be taken after the reform of 1835. The special bodies, trustees, commissioners, inspectors, and the like, which had been set up to light, pave, and drain towns, were not compulsorily merged in the Town Council.[1] Not until 1857 was an amendment introduced into the Municipal Code which made for consolidation. By that Act a Town Council was allowed by arrangement to take over from these trustees and commissioners any special powers of administration possessed by them. Even in the Consolidation Act of 1882 compulsory powers were not given for this purpose; but, in truth, they had become unnecessary. In this as in so many other departments of English public life, the development of public opinion and the initiative given by it to the representatives of the burgesses had forestalled the tardy movement of general legislation. What a compulsory general Act might have done at a stroke was brought about in almost all cases by mutual arrangement, or by local legislation, which thus made up in the latter half of the nineteenth century for the offences it

Powers conferred by statute.

[1] Cf. Clifford, *Private Bill Legislation*, vol. ii. chap. xi., on the state of the boroughs before 1835, and the changes effected by local improvement Acts. Also see pp. 131-134 of the present volume.

had previously committed against the principle of municipal concentration. At the present time this process of consolidating municipal government in the hands of the Borough Councils is practically complete (with the two important exceptions of poor relief and collection of rates), though in a few places some curious anomalies still survive.[1] Besides the quasi-public bodies of trustees and commissioners, who carried out necessary but usually unremunerative undertakings, there was another important class of private corporations or companies incorporated as a rule by private Acts of Parliament for the purpose of conducting remunerative undertakings in connection with towns. These undertakings—such as gas and water works—were usually of a monopolistic character. In 1845 a Parliamentary Committee reported in favour of transferring private gas and water companies to the local authorities. But no general legislation resulted, and towns were thus forced to fall back on private Bill legislation in order to extend their activities to meet the needs of their constituents. According to a return prepared by Clifford with official assistance, there were in 1884 270 places, not all municipalities, which had water-works of their own and 150 towns with municipal gasworks. Since that time many more of these and other undertakings have been municipalised, private Bill legislation having been supplemented by the introduction of the system of provisional orders.[2]

Over the whole of this expanding sphere of activity a corresponding network of organisation for the municipal administration and municipal service was spread by the methods described in our last chapter. In this place only one further remark is necessary with reference to the organisation of police. The province of the municipal police is not confined to the suppression of crime and the preser-

[1] Until 1889 a dual system prevailed in Oxford and Cambridge. In that year consolidation was arranged on terms that the Corporation of the University of Oxford was to appoint nine and that of Cambridge six members of the Town Council. Education was municipalised by the Act of 1902; see vol. ii.

[2] Given by the Local Government Board and the Board of Trade, and confirmed at the end of each session—except in case of opposition—by the Provisional Order Confirmation Bill. In England and Wales over 180 municipal authorities supply gas, and about the same number supply water; cf. for lists with details *The Municipal Year-Book* (1902), p. 417.

vation of order. It is their duty to maintain all the laws of the land and to act as the servants of every court of law within the municipal area. The powers and organisation of Borough Councils in regard to questions of rating and finance form a special subject to be treated in our next chapter.

A comparison of the Consolidation Act of 1882 with the original Act of 1835 shows that the powers which a Municipal Corporation derives from the Municipal Code have been but slightly extended. The large and substantial developments of municipal activity by general Acts are mainly due, as was shown in the historical part of this treatise, to public health legislation, which gradually brought into compulsory and universal operation a vast number of rules adopted previously by the more progressive communities. It has been seen how the Public Health Act of 1875, which consolidated and to some extent amended the law, concluded the process for the time being by formulating all these scattered provisions in an orderly code of public health. Under that Act every municipal borough is a sanitary district, and every Town Council an urban sanitary authority. Consequently a multitude of sanitary duties and powers devolve on Town Councils, and the volume of municipal activity has been immensely swollen. The sanitary duties which a Borough Council is compelled to perform include first of all the enforcement of all the elementary precautions which science regards as indispensable to the health of a town.[1] First come regulations for the sewerage and drainage of the district (secs. 13-26). The material difference between a drain and a sewer is that the first drains one building, or premises within the same curtilage only, whereas a sewer drains more than one. Upon this distinction the law builds; for drains are left in the hands of the individual, while sewers are "vested" in, *i.e.* made the absolute property of, the local authority.[2] The result is that sewers have to be repaired by the local authority and the expense defrayed out of the rates, and that the local authority is responsible for any nuisance arising out of its

Public Health legislation.

The Act of 1875.

[1] Part III. of the Public Health Act of 1875, entitled "Sanitary Provisions" (secs. 13-143) contains the sanitary provisions proper.

[2] P.H.A. 1875, section 13, cf. section 149 for the "vesting" of streets.

system of sewerage. All owners and occupiers within the district have a right to drain into the sewers, and the local authority has the right to require them to do so, and to make at their own expense the necessary connecting drain, so long as the distance is not more than 100 feet. The second subdivision of Part III. gives powers to the sanitary authority for the disposal of sewage and the making of sewage works or sewage farms (secs. 27-33). Then follow nine sections providing for the internal drainage of houses and factories, *i.e.* the proper provision of water-closets and other accommodation. By section 42 "Every local authority may, and, when required by order of the Local Government Board, shall themselves [*sic*] undertake or contract for

The removal of house refuse from premises;

The cleansing of earth closets, privies, ash-pits, and cesspools;

Either for the whole or any part of their district."

Under the title "scavenging and cleansing," this and the eight sections following provide for the removal and abatement of certain nuisances in streets, houses, and ditches, the purifying of houses certified by the medical officer of health to be filthy, and for the removal of offensive accumulations by, or at the expense of, the owner or occupier of the premises on notice given by the inspector of nuisances. Then, after provisions relating to water-supply,[1] and to the prohibition and regulation of cellar-dwellings and lodging-houses,[2] the Act proceeds to define nuisances by an eightfold description,[3] and to provide special remedies for their summary abatement.[4] With regard to nuisances it is the duty of a local authority constantly to inspect its district for their detection. If it make default in so doing, the Local Government Board may step in.[5] On hearing and being satisfied of the existence of a nuisance, it is the duty of a local authority to serve a notice on the person responsible "requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that pur-

[1] P.H.A. 1875, secs. 51-70. [2] Secs. 71-90. [3] Sec. 91.

[4] Secs. 91-110. By section 111 these provisions are not to affect or abridge other remedies.

[5] Sec. 92. Inspectors of nuisances are appointed under section 189.

pose." If the notice is not complied with, complaint must be made to a Justice, and the Justice must thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction, which court has power to make an order requiring compliance with the notice, or requiring abatement and prohibiting recurrence of the nuisance. Without entering into further detail as to the powers and duties of the sanitary authority and the police in regard to the nuisances defined by section 91, we may now mention briefly the remainder of the sanitary provisions contained in Part III. of the Public Health Act. Under the heading of offensive trades it is provided that any persons who wish to establish noxious or offensive trades such as those of fell-monger or bone-boiler must obtain the consent of the urban authority, which may also make bye-laws to regulate such trades.[1] Power is given to the medical officer of health or inspector of nuisances to inspect meat and food exposed for sale in the district, to confiscate it if unfit for food, and to proceed against the vendor before a Justice of the Peace.[2] Then follow a series of provisions to prevent the spread of infectious diseases. It is the duty of the local authority to cause infected premises to be cleansed, and the authority is also empowered to destroy infected articles, to provide conveyance for infected persons, and to establish hospitals for the use of the inhabitants.[3] It is the duty of the local authority to carry out any regulations made by the Local Government Board for any part of England which "appears to be threatened with or affected by any formidable epidemic, endemic, or infectious disease."[4] Lastly, a local authority may provide mortuaries and places for *post-mortem* examination.[5] Such in their main outline are the sanitary duties and powers conferred upon a Town Council as local sanitary authority by the Public Health Act. The same Act assigns other important functions to Borough Councils by making them the highway and building authorities for the town. The maintenance, repair, and lighting of all public streets and the laying out of new ones, the prescribing of lines of frontage for houses and buildings, the building of new bridges and the maintenance of

[1] Secs. 112-115. [2] Secs. 116-119. [3] Secs. 120-133.
[4] Secs. 134-140. [5] Secs. 141-143.

old ones, are all functions attached to a Town Council as the sanitary authority — to which we must add the control of street traffic on public occasions, etc., the regulation of cabs and other vehicles, and of tramways. The Town Council is also the building authority for the town. Every person who wishes to build must have his plans approved by the Council, and to this end he must take care to comply with the Council's building bye-laws. There are several sections also in the Act under which the Town Council as sanitary authority may take proceedings to prevent the pollution of streams; and additional powers for the purpose are given by further legislation, such as the Rivers Pollution Prevention Acts 1876 and 1893, and by local Acts embracing large districts of England.[1]

Extensions of municipal powers since 1875.

Since the passing of the Public Health Act the sanitary duties imposed upon Town Councils have been extended by further legislation. Quite a series of statutes have been passed to prevent the adulteration of food, by which sanitary authorities are bound to appoint a public analyst, and provide him with laboratories for the purpose of testing various articles of consumption, such as milk and butter.[2] By the Contagious Diseases (Animals) Acts 1878-94 the local authorities are compelled to carry out certain duties with regard to the sanitary condition of dairies, cow-sheds, and milk-shops, under the supervision and regulations of the Board of Agriculture, and for this purpose it is usual for Town Councils to appoint one or more committees. Again under the Weights and Measures Acts 1878-93 a Borough Council is the authority for supervising scales, balances, and weights used in the town. An inspector of weights and measures is appointed to see that proper scales and weights are used, and bye-laws may be made by the local authority. So much for the powers which a Borough Council is obliged to exercise, and they may be said—if we pass by the organisation of local finance[3]—to cover the whole field of local government except that part which is occupied by the Boards of Guardians. It

[1] *E.g.* the Thames Conservancy Acts, the Mersey and Irwell Joint Committee Act 1892, and the West Riding of Yorkshire Rivers Act 1894.

[2] Sale of Food and Drugs Acts 1875-1899.

[3] On the absorption of overseers, cf. section 33 of the Local Government Act of 1894, and the next chapter on Borough Finance.

is to be observed that the powers of a local sanitary authority should be carefully distinguished from its duties, for a considerable part of the Public Health Act is merely permissive. The "shalls" and the "mays" are dispersed through the Act so promiscuously that their separation would be more tedious than useful. Some of the permissive powers, such as those for the erection of slaughter-houses, have already been mentioned. To these may be added powers to acquire and lay out parks, gardens, and open spaces, to establish baths and wash-houses, to install electric light, to lay down tramways[1] and light railways,[2] and to take over graveyards or provide cemeteries. All these are things that a municipality can do but cannot be made to do. There is, however, a second method, also permissive, by which a Town Council may extend its sphere of activity, viz. by the adoption of an Adoptive Act. The most important of these Adoptive Acts may now be briefly enumerated.

Some Adoptive Acts.

1. The Public Health Amendment Act of 1890, Parts II., III., IV., and V. of which may be adopted by any urban authority.

Part II., if adopted, gives power to make bye-laws under the Board of Trade, to prevent danger from electric wires, etc., stretching along streets.

Part III. contains a number of sanitary provisions.[3]

Part IV. contains provisions with regard to the licensing and regulation of dancing and music halls; and Part V. contains additional powers for the issue of local stock.

2. Housing of Working Classes Act 1890—an Act to consolidate and amend previous legislation upon the subject. The third part only is adoptive; it enables a local authority to purchase or erect and manage lodging-houses, to charge for lodgers, and also to make bye-laws for their regulation.

3. The Public Libraries Act 1892, consolidating and amending the previous law, and enabling the authority to levy for the purpose a rate not exceeding one penny in the pound.

4. The Museums and Gymnasiums Act 1891. The adoption of this enables urban authorities to provide and maintain museums and gymnasiums.

[1] Under the Tramways Act 1870. [2] Light Railways Act 1896.

[3] Including the notorious section 19 (1) about "a single private drain."

5. The Private Streets Works Act 1892, which may be adopted by any urban authority as a substitute for sections 150-152 of the Public Health Act 1875, and for section 41 of the Public Health Amendment Act 1890, if Part III. of that Act has already been adopted, confers considerable advantage by making it easier for the authority to recover the expenses of "making up" streets from the owners of the land adjoining.

These Acts or parts of Acts have only to be "adopted" by a qualified majority, consisting of two-thirds or three-quarters of the Council, in order to be brought into force in any given borough. An Adoptive Act, when once adopted, has, of course, precisely the same validity and binding force as other legislation. The third and last means we have to notice for extending the range of municipal work is private Bill legislation. It is by local Acts, as we have seen, that the first experimental improvements have as a rule been made, and it is from local Acts that model clauses have been drawn and brought by Parliament into general use, either through the Clauses Acts, or through Adoptive Acts, or finally through the ordinary general statutes. Nor shall we be wrong in regarding this form of particular legislation as the most vigorous and fruitful factor in the development and extension of municipal government. There is no more important work done by Parliament. Hundreds of local Bills pass through its committees every year conferring new powers of all kinds upon local authorities. Indeed, there are some large towns which scarcely allow a year to pass without promoting some local Bill containing an application for new powers to the Parliamentary Committees.[1] But this is by no means the only form of local legislation, for we must add to private Bills

Extension of powers by private Acts

[1] All private Bills must be sent to the Private Bill Office of the House of Commons not later than 30th November in each year. In 1899, 262 private Bills and Provisional Order Confirmation Bills received the approval of Parliament. This collection as usual contained applications upon all manner of subjects, and for every kind of administrative power. Each Bill was itself very often a strange conglomeration of powers, for it is the practice for a town when it promotes a Bill to provide in it for all the needs and requirements which have arisen since its last local Act was passed. A Bill of this sort is called an "omnibus Bill." Of these omnibus Bills two examples taken from the session of 1900 may serve: (1) Rochdale—a Bill to establish tramways and

proper the yearly increasing legislation by provisional orders of central departments, and particularly of the Local Government Board and Board of Trade. It was first in connection with sanitary legislation that the Local Government Board was empowered to confer on local authorities new powers by means of provisional orders.

and by Provisional Orders.

So far we have treated private Bill legislation merely as a source of municipal expansion. It may also be looked at from another point of view as a right of the Borough Council. And from this standpoint one would be inclined *a priori* to hold that the bringing in of a local Bill in Parliament belongs to the powers inherent in a municipality by reason of its incorporation. As every English citizen is entitled to petition the High Court of Parliament, so it would seem should every legal person or corporation be entitled to do the same, especially as it admittedly enjoys the right to take part in legal proceedings. And, as a matter of history, the right of municipal boroughs to introduce local Bills into Parliament, and to oppose Bills being brought in by others, and to provide costs for these proceedings out of the borough fund, was long uncontested. It was only when this local legislation came to be used more and more for the purpose of municipalising private monopolies that the legal point was raised by the threatened capitalists in their own interest, and decided, very unfavourably to the towns, in the important case of the Sheffield Water-works.[1] In that case the judges declared that Borough Councils had no power to throw upon the rates the cost even of proceedings undertaken in the interests of the ratepayers; and by this decision one of the main nerves of municipal progress was

The right to promote Private Bills,

various electrical undertakings, and to provide a refrigerator; to increase the expenditure on education and libraries; to obtain powers to regulate trade in ice-cream, etc. (2) Halifax—a tramway Bill with a number of most heterogeneous clauses, including power to inspect milk-farms, both within and outside the city; also to prohibit the purchase of milk drawn from tuberculous cows; and for establishing reading-rooms and restaurants in the parks, for making regulations against noises in the streets, and for increasing the number of inspectors of nuisances, cf. *Municipal Journal*, 1899, and *Municipal Year-Book*, 1900, pp. 5-18.

Powers already possessed under general Acts are sometimes asked for in a local Bill for the sake of obtaining easily through Parliament borrowing powers which might not readily be granted by the Local Government Board.

[1] Reg. *v.* Sheffield Corporation, L.R. 6 Q.B. 652.

destroyed. A storm of indignation was aroused which forced Parliament to legislate on the subject, and the result was a compromise. The Borough Funds Act[1] of 1872, which is still in force, is entitled "An Act to authorise the application of funds of municipal corporations and other governing[2] bodies in certain cases." and the Borough Funds Act. Any governing body which judges it expedient to promote or oppose any local Bill in Parliament, or to prosecute or defend any legal proceedings in the interests of the inhabitants, is thereby empowered to apply its fund or rate to the payment of the costs and expenses; but—and here the influence of the financiers and opponents of municipal enterprise is discernible—it is "provided that nothing in this Act contained shall authorise any governing body to promote any Bill in Parliament for the establishment of any gas or water works to compete with any gas or coke company established under any Act of Parliament." Other conditions and formalities have to be complied with, and even then the Act does not apply if the promotion of the Bill or the opposition to it is decided, by a committee of either House, to be unreasonable or vexatious.

The main conditions to be fulfilled before the costs of a Bill can be charged on the rates are as follows:—First, a meeting of the Borough Council, after ten days' notice by public advertisement, must be held and a resolution passed in favour of the proposed expenditure by an absolute majority, not merely of the Councillors present but of the whole Council. The resolution must also receive the approval of the Local Government Board in respect of matters within its jurisdiction (*i.e.* the sanitary clauses), and of a Secretary of State. Moreover, in case of the promotion of a Bill in Parliament no further expense may be charged on the ratepayers after the deposit of the Bill until a further special meeting has been held, and the propriety of promoting the Bill confirmed by another absolute majority. Finally, a meeting must be held by the ratepayers and owners of

[1] 35 and 36 Vict. c. 91. On the history of this Bill, cf. Clifford, *Hist. of Priv. Bill Legis.* vol. ii. p. 545 *sqq.*

[2] The expression includes all urban sanitary authorities. Whether it includes rural sanitary authorities is doubtful.

property, whose consent must be obtained before any expense, either in promoting or opposing any Bill in Parliament, may be charged upon the rates. The rules of procedure under which the approval of owners and ratepayers is to be obtained, whether in the case of municipal or other local Bills, are contained in the third schedule of the Public Health Act 1875. A town meeting is summoned by the Mayor on the requisition of twenty ratepayers and owners. It must be advertised in the local papers. The voting is taken, according to the common law rule, by a show of hands unless a poll is demanded; but if a poll is demanded, extraordinary as it may seem, the old scale of plural voting in six classes (which existed under the old system of local Boards) prevails, even when the meeting is a meeting of municipal owners and ratepayers. It should be added that the consent of the Local Government Board is to be given after the publication of the second resolution, and that it has been the practice of the Board to refuse its assent (*a*) if the objects of the Bill might clearly be obtained by a Provisional Order,[1] or (*b*) if the powers sought are already given by the Public Health Acts. However, this clumsy machinery, which was intended to throw legal obstacles in the way of progressive legislation, has only here and there seriously restricted the initiative of Town Councils. In the large towns, where it is practically and physically impossible to summon a "town meeting" in the real sense[2] the law has been reduced to the level of a vexatious but usually innocuous formality. However that may be, local improvement Bills are brought in year by year in as large numbers as ever, and in far larger numbers if we allow for the growth of the cheaper form of legislation by Provisional Orders.[3] Without doubt

[1] In accordance with Borough Funds Act 1872, sec. 10. An Amending Act was before Parliament in 1902.

[2] Cf. H. Hobhouse, *Devolution*, p. 5, where it is described as "a legal farce." Yet at a town meeting held in Bradford (Dec. 1902) a Bill promoted by the Corporation was criticised and altered in several important details. In smaller towns the machinery provided is often used by threatened interests to impede a proposed Bill.

[3] Which after being approved by the Local Government Board or other ministerial authority, are laid before Parliament as Provisional Order Bills, and have the same force and effect when passed as have the true local Bills which are brought directly before Parliamentary Committees.

these two forms of local legislation sufficiently meet the needs of towns, as they outgrow year by year the province of public legislation. To attempt any enumeration of the needs satisfied by private Bill legislation is obviously impossible; suffice it that the volumes of local statutes contain huddled together marvellous evidences of the progress of "municipal socialism" in England during the nineteenth century—a movement so swift and strong that it might have been a revolution if it had not taken place in the English democracy. In Clifford's meritorious work this peaceful expansion may be followed in each of its main branches; and we may read in his pages how, in an infinite variety of towns and conditions, the democratic idea has fought its way victoriously through the difficult country of prejudices and vested interests.[1] In one respect private Bill legislation has greatly improved with the improved conditions of local government. Of old, as we have seen, local Acts led to the splitting up of municipal work among a number of special or *ad hoc* bodies. They were a means of disintegration. Nowadays, on the contrary, they are a means of consolidation; for every enlargement of the boundaries of municipal work means an enlargement of the functions of the Town Council, which has now at length become a real centre of public life in every town. So strong is the municipal spirit throughout the country that the great majority of towns have made full use of the opportunities provided by the Adoptive Acts, and have enlarged their duties and activities to the full extent of their powers and possibilities. On these lines more has been gained for municipal government than could have been secured by the most sweeping definition of the objects of communal organisation. The English Legislature has always stood to the principle that a local expression of local needs is the best indication of the

Advantages of local Acts.

The springs of progress are local.

[1] Clifford gives a clear view of the variety of social and economic improvements which have been brought into operation by private Acts. The vast extent of the practical work done by the private Bill Committees of Parliament may be imagined from a single statistical result, viz. that between 1800-1884, 14,774 local and personal Acts were passed excluding the Provisional Orders Confirmation Acts, which began towards the end of this period; cf. Clifford, vol. i. p. 492, and Book II. Part VII. of this work (vol. ii. p. 337 *sqq.*).

powers a town requires over and above those conferred upon it by general legislation, and that municipal government, if it is to have true life and depth, must build its organisation upon its needs—not as officially interpreted, but as understood and expressed by its representatives. It is true that where the local representatives themselves have been seen to be neglecting the interests of their constituents the English Parliament has not hesitated to legislate peremptorily, in order to drive them in the right direction. But with the improvement of public opinion, and the growth in modern times of a spirit of emulation between towns, with the increasing participation of the labouring classes in the work of government, and with the increasing sense of responsibility produced thereby in the higher ranks of society, more and more is being left to local initiative, less and less to the driving forces of compulsion. And nowadays Parliament, once the pioneer of municipal progress, is rather a conservative and retarding factor in the stormy advance of municipal activity.

The question of a central control over municipal work raises grave and difficult constitutional problems; and it is in private legislation that the most characteristic solution has been found. This is not the place to trace from its beginnings the development of local legislation, or to show how the direct supervision of Parliament over local government has thus provided the English State with a constitutional guarantee, of a practical value that is little appreciated by Continental theorists, but rather to indicate how the institution of private Bill legislation has influenced and formed the relationship of a town government to the central departments of State. We have seen how municipal administration is entrusted to the freely-elected representatives of the burgesses. We have seen too how from ancient times the whole nation has enjoyed local autonomy in town and country, and has been governed without any direct interference by the Crown and its instruments. Finally, we remind ourselves that the very absence of any direct control over local government by the Crown has been one of the main supports of the system of so-called "classical self-government." So there arose in the

Local legislation as a control.

modern chapter of constitutional development which began with the Reform Bill, the great problem how a central control over home administration, so necessary yet hitherto non-existent, could be created without violating the fundamental principles of the constitution. We know now how the problem was solved, how the Cabinet was transformed into a council of departmental ministers collectively responsible, like a committee, to the House of Commons, and how the individual Minister was given a direct control over that province of local administration which lay nearest to his department. But this is only a part of the subject. By a principle underlying the whole English constitution there may be no exercise of public authority, no act of the executive, unless power to exercise the authority or do the act has been conferred by the Legislature—a grand principle, for it expresses the predominance of that "rule of law" which Dicey regards as the pivot of the English constitution. Consequently, as Parliament developed, not only the rules it laid down for general application, but also those which applied only to a particular district or county, were called laws, and were drawn and passed with all the solemn ritual of public statutes. Treading in this constitutional path Parliament evolved the system of private Bill legislation which enabled it from time to time, by laws of only local application, to clothe local authorities with such powers as they required. Thus ever since the fifteenth century Parliament has exercised, more especially over English towns, the control of a superior court, legislative in form, but administrative in reality, and has in this way contrived to establish a second form of central control which is absolutely unbureaucratic. In other words, finding that some form of administrative supervision over local government was indispensable, the nation with unerring instinct made the control itself agreeable to the principles of the British constitution.

A cognate question remains unanswered: How far, namely, have the different forms of central control actually adopted infringed upon the autonomy of the Borough Councils? So far as the election and the organisation of the Council are concerned there has been, as we saw, no infringement, and, even as regards the actual work of administration, the Council

is, substantially speaking, a free agent little troubled by administrative supervision. In this respect the sphere of municipal administration may be divided. One province, in which the powers exercised are conferred by the Municipal Corporations Act and local statutes, may be said to be almost free from the control of any central department. In the other province, in which the powers exercised are given by the Public Health Act and a group of other statutes, the Town Council is for many purposes subjected to the Local Government Board, or to some other central department like the Board of Trade. These superior powers of the Local Government Board are associated with a firm control over local finance, which strengthens the safeguards already provided in the financial clauses of the Municipal Code. Thus a new element has been introduced into the organisation of the municipal civil service, and a certain though strictly limited measure of direct administrative control has been assigned to the central authority, which is empowered to supervise the appointment, conduct, and dismissal of certain officials[1] entrusted with the management of public health. And this direct influence over some officials of the Borough Council gives the Board an indirect influence over the branches of administration with which those officials are connected. Finally, the central authority—and here we must recognise an innovation in English constitutional practice—is given the power under certain specified and narrowly restricted conditions to compel a Town Council to carry out the law where it has long and wilfully neglected to do so. But a detailed account of these matters must be reserved for our chapter on the organisation of the central authorities in the system of Local Government. Here it is enough to call attention to the practical operation of this central superintendence, and above all to insist upon the supreme point that the character of English municipalities is so self-reliant and their autonomy so strongly guarded, that the exercise of the powers of the central authority is generally

The form and substance of administrative control.

[1] Medical Officers and Inspectors of Nuisances; but only in case the local authority chooses to draw half their salaries from the Exchequer contribution account. In some places the Borough Council prefers to retain entire control and pay the entire salary. See Annual Local Taxation Returns, 1899-1900, Part V.; Borough Accounts, Part I., col. 18; and Part V., table 1, col. 5.

either unnecessary or impracticable—partly, no doubt, because the ministerial head of a department responsible to Parliament is not likely to court the bitterness and unpopularity which generally attends a sharp bureaucratic interference with the representatives of local democracy. But the main consideration is that these extreme powers are only conferred to exact a minimum of attention to the demands of public health; and a Borough Council is usually eager and willing that its sanitary administration should attain a far higher standard than the official minimum. These powers, therefore, only apply to conditions which do not exist in the great majority of towns. But the powers are there, and stand undisputed on the Statute Book in spite of the dislike long cherished by the Town Councils and their chief officials against the central departments. They rest there, like so many other weapons stored in the armoury of the British constitution, ready to be brought out at the moment when it may be deemed necessary in the public interest to take strong measures against local incompetence or parochial prejudice. The financial safeguards, which the English form of central control provides against rash municipal expenditure, stand in another category, and must be dealt with in the ensuing chapter.

CHAPTER VIII

THE FINANCE OF MUNICIPAL GOVERNMENT [1]

Property, Revenue, Expenditure, and Debt

THE creation, organisation, and management of the corporate revenue are among the primary functions of a Borough Council; for almost every act of municipal administration involves expenditure. From the legal idea of incorporation, it follows that an incorporated town is competent to acquire and own property, and to employ it for the furtherance of corporate objects. But a municipality, besides being a corporate body, is also a public authority with duties imposed and functions limited by statute; and its position as a public corporation necessarily extends its financial powers far beyond the limits of those enjoyed by a private corporation, while at the same time, with equal necessity, certain restrictions and obligations are imposed upon a public corporation in the interest and for the protection of ratepayers, different in kind from those which the Legislature has attached to private corporations in the interest and for the protection of shareholders. Of the extended financial powers belonging to a municipal corporation, the most characteristic and important is, of course, the right to raise by rates such sums as may be necessary to defray the expenses of work which it is obliged or empowered by Parliament to carry out.

Private and public corporations.

[1] See various general Acts, and especially M.C.A. 1882, Part VII.; P.H.A. 1875, Part VI.; P.H.A. Amendment Act 1890, Part V.; and the Local Government Acts 1888 and 1894. The organisation of municipal finance is only cursorily treated in Wright and Hobhouse, p. 23; Vauthier, chap. iv.; Arminjon, chap. xii.; Blake Odgers, pp. 91-95; Chalmers, pp. 85-88. Gneist's *Self-Government*, sec. 106, is much out of date.

In the revised and consolidated Act of 1882, no less than in the first edition of 1835, the financial provisions are plainly based on the same considerations as other parts of the code. The very same principle by which, as we have seen, the obligatory work of a municipality was restricted to a minimum, is applied to circumscribe the sphere of its financial operations. In truth, administrative duties and financial powers are indissolubly connected. An extension of the one involves an extension of the other. Hence the principle involved in section 92 of the Municipal Corporations Act 1835, and also in the Consolidation Act of 1882,[1] that the costs of carrying on municipal government shall be defrayed out of the proceeds of municipal property—that is to say, out of "the rents and profits of all corporate land, and the interest, dividends, and annual proceeds of all money, dues, chattels, and valuable securities belonging or payable to a municipal corporation." Out of this annual income, to which must be added fines and penalties accruing during the year, is constituted the borough fund. If, and so long as, this borough fund is sufficient to cover the annual expenditure, the Council is not authorised to levy a borough rate. The application of the borough fund is provided for by section 140 of the Act of 1882, and the payments with which it is charged are specified in Parts I. and II. of the Fifth Schedule. They include the remuneration of municipal officers, and generally the expenses necessary for carrying the Municipal Corporations Act into effect. The possibility of a surplus remaining over, after all the charges on the borough fund have been met, is provided for as follows:—

Constitution of the borough fund.

1. If the borough fund is more than sufficient for the purposes to which it is applicable under this Act, or otherwise by law, the surplus thereof shall be applied under the direction of the Council for the public benefit of the inhabitants and improvement of the borough.

2. If the surplus arises from the rents and profits of the municipal corporation, and not from a borough rate, and the borough is a sanitary district under the Public Health Act 1875, then the municipal corporation, as the sanitary authority for the borough, may apply the surplus in payment of any expenses incurred by them as sanitary authority, before or

[1] M.C.A. 1882, secs. 139, 140. A borough council may not expend principal. *Ex parte the Corporation of Hythe*, 4 Y. and Coll. 55.

after the commencement of this Act, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the Public Health Act 1875, or any Act thereby repealed.[1]

Only if the borough fund created by municipal revenues is insufficient can a borough rate be levied.[2] In the words of the statute: "If the borough fund is insufficient for the purposes to which it is applicable under this Act or otherwise by law, the Council shall from time to time estimate, as correctly as may be, what amount, in addition to the borough fund, will be sufficient for those purposes." And "in order to raise that amount, the Council shall, subject to the provisions of this Act, from time to time order a rate, called a borough rate, to be made in the borough."[3] That few boroughs are, like Doncaster, rich enough to dispense with a borough rate does not, of course, in any way affect the principle established by law that the borough fund is the primary, the borough rate only the secondary, resort of municipal finance.

It follows, therefore, that in discussing the revenues of a borough, the income arising from sources other than rates should be treated first.

Corporate property in land.

It has been observed that a municipality is, quite apart from statute, capable as a corporation, at common law, of obtaining property, and of owning it in perpetuity undisturbed by the death of its members. This, and the further capacity of suing and being sued, constituted the essentials of a *persona ficta*, according to the conceptions of English common law. But the English theory of corporations did not adopt this conception of the legal person without considerable modifications. By the operation of laws based on the statutes in mortmain, real or landed property might not be alienated to corporations except by license in mortmain from the Crown and from the lord holding under the Crown; and although religious corporations were intended in the famous statute *De Religiosis*,[4]

[1] M.C.A. 1882, sec. 143. There is some obscurity here, because, whereas sub-section 1 seems to assume that the existence of a surplus depends on the non-existence of a borough rate, sub-section 2 contemplates the possibility of a surplus and a borough rate coexisting.

[2] For the borough rate, see secs. 144-149, M.C.A. 1882.

[3] M.C.A. sec. 144.

[4] 7 Edward I. stat. 2, c. 1.

yet a later Act of Richard II.[1] expressly included "mayors, bailiffs, and commons of cities, boroughs, and other towns, which have a perpetual commonalty," on the ground that "they be as perpetual as people of religion." The consent of the lord was dispensed with by an Act of William III.; but the old theory still survives in so far that, even for municipal buildings, a municipal corporation has no power to purchase and hold more than five acres of land "either in or out of the borough," unless authorised by license from the Crown or by Act of Parliament.[2]

The spirit, then, of mediæval legislation still survives. A municipality has not a free hand in the acquisition of real property. Great industrial towns would obviously be severely hampered by such restrictions as these. To obviate in a measure these inconveniences, the Municipal Code goes on to provide that "where a corporation has not power to purchase, or acquire land, or to hold land in mortmain," the Council may, with the approval of the Local Government Board,[3] "purchase or acquire any land in such manner and on such terms and conditions" as the Local Government Board may approve, "and the same may be conveyed to, and held by, the corporation accordingly."

Thus a way of escape is found from the severe limitations of the old corporation theory; yet the theory still lives, inasmuch as a municipal corporation can only acquire and hold land for the purposes of municipal administration—that is to say, for carrying out the duties and powers conferred on it by Parliament. If this implied condition were not complied with, the consent of the Local Government Board would be withheld. In practice, however, this power is seldom exercised by the Board. It is a formal power, ordinarily of no signifi-

[1] 15 Richard II. c. 5. For a learned discussion of these statutes in relation to this subject as it stood in 1850, see Grant's *Law of Corporations*, pp. 129-153. For later legislation, see the Mortmain and Charitable Uses Acts 1888, 1891, and 1892.

[2] See M.C.A. 1882, sec. 105, which is the first section of Part V. on "Corporate Property and Liabilities." The power is practically useless, as there is no money to buy the land with, unless the Local Government Board consents. In 1900 an Act was passed to enable towns to purchase land (outside the borough) for the erection of workmen's dwellings. Land may also be bought outside the borough for hospitals, sewage-farms, etc.

[3] Formerly the Treasury. M.C.A. 1882, sec. 107.

cance, but ready, in case of necessity, to be put into operation, —one of those checks and balances with which the English constitution abounds.[1]

Although a Borough Council may not (unless authorised by Act of Parliament) sell, mortgage, or alienate any corporate land without the approval of the Local Government Board, yet they may, without any such approval, lease it for a term not exceeding thirty-one years, or in case of land built over or for building, under certain specified conditions, for a term not exceeding seventy-five years. Otherwise, unless authorised by Act of Parliament, a Council must obtain the approval of the Local Government Board for its leases.[2] If the Local Government Board consents to corporate land being converted into sites for

[1] Many of the old towns possess valuable estates in land which yield large rents. These estates are usually leased for terms of years. In almost all cases wealth and population have so grown that as leases fall in, the corporations have been able to secure great additions to the increment from corporate property. At Nottingham, leases granted long ago are slowly falling in, and the gross annual rental of the corporation lands had risen in 1894 to £30,000. In January 1894 one lease fell in, under which the corporation had been receiving £5 a year, and the land was promptly re-leased by auction at £2000 a year! See evidence given by the Town Clerk of Nottingham to the Royal Commission of 1894 (Q. 9769 and 9770). The following table, extracted from the *Municipal Year-Book of* 1902, will suffice to show how substantial in many cases are the revenues from corporate property :—

I. County Boroughs

Bristol	£24,246	Norwich	£3,970
Cardiff	5,000	Oxford (Markets included)	3,310
Derby	8,800	Reading	1,691
Hull	17,400	Southampton (Harbour dues)	1,200
Ipswich (Markets included)	3,812	Worcester	6,500
Leicester	10,259	York (Gross rents)	3,918
Manchester (Markets only)	15,000		

II. Smaller Boroughs

Aldeburgh	£424	Bridport	£600
Arundel	500	Cambridge	1,900
Banbury	535	Clitheroe	600
Bedford	2,300	Doncaster	23,463
Beverley	793	Dorchester	700
Bodmin	985	Hartlepool	850
Bridgewater	1,300	Harwich	1,200

[2] M.C.A. 1882, sec. 108. For the specified conditions, see sub-section 2 (*b*). By section 110 a council may renew leases where such a renewal is sanctioned or warranted by law or ancient usage. It is worth noting that the Local Government Board may authorise an exchange of municipal property.

working-men's dwellings, the Council may let parcels of land for that purpose on 999 years' leases.

Besides rents from land there are other sources from which revenues flow into the borough fund. These, as a rule, are valuable franchises and monopolies—such as markets, ferries, bridges, port dues, and the like. Sometimes they afford large relief to the ratepayer. The Corporation of Birkenhead, for instance, in the year ending March 1900 is said to have made £9545 profit out of its ferry rights.[1] Great additions to the revenues of many towns have also been made by the progress of what we have called municipal socialism. Monopolies like gas, water, and tramways, which are capable of producing large profits, have been taken over by the Councils of most of the larger towns, and many other services of a public character have been municipalised. But this subject of municipalisation, important as it is, lies outside our scope, and is only mentioned as one of the factors which swell the revenues and affect the financial organisation of Borough Councils.

Other municipal revenues.

And now, having given an account of the borough fund and its fiscal tributaries, we proceed next to explain how its outflow—the expenditure—is regulated by law and practice. The administration of that annual income from real and personal property which constitutes the borough fund, is entrusted, as we have seen, by law to the almost unrestricted control of the Town Council. The expenditure, on the contrary, is treated on quite different principles. Its whole administration is regulated by statute. Every item of expenditure must be strictly legal—that is to say, it must have the sanction of some power conferred, or obligation imposed upon, the municipality by the Legislature.[2] The expenditure of a Borough Council may be classified under three heads:—

Municipal expenditure: its regulation.

1. The remuneration (if any) of the Mayor, of the Recorder (if any), of the Stipendiary Magistrate (if any), of the Treasurer, of the Clerk of the Peace (if he is paid by salary), of the

[1] See *Municipal Year-Book*. The ferries originally belonged to the priory and convent of Birkenhead.

[2] We have seen above (p. 373) that a certain freedom is given to a Town Council as regards expenditure from corporate revenues in case of a surplus.

Clerk to the Justices, and of all officers appointed by the Council; also the remuneration and allowances certified by the Treasury to be payable to the Treasury in respect of an election petition; also the remuneration certified by the Recorder to be due to any assistant Recorder, assistant Clerk of the Peace, or additional Crier.[1]

The above are the only payments which may be made out of the borough fund without an order of the Borough Council, signed by three members of the Council and countersigned by the Town Clerk.[2]

2. Payments made under the authority of an Act of Parliament, or by order of a Justice of the Peace, or by order of the Court of Quarter Sessions for the borough or county, or of any other Court.[3]

3. All payments specified in the Fifth Schedule of the Municipal Corporations Act 1882, Part II., 1-10 and 12. These comprise all expenses provided for in the Act of 1882, or necessarily incurred in carrying the Act into effect.

A payment must be legal in substance as well as form. It does not at all follow that, because the order for payment is duly made out and signed, the payment is legal: it only justifies the Treasurer in making the payment. Payments good in form may be made bad owing to some flaw in the proceedings and resolutions of the Town Council, or to a failure to comply with the Act or Acts of Parliament authorising the expenditure. Any ratepayer is entitled to test the legality of any such order for payment by removing it to the King's Bench Division of the High Court of Justice by writ of *certiorari*, where it "may be wholly or partially disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the Court."[4] In this way, to take an example, payment from the borough fund by a corporation which was lord of the manor of the expenses of a dinner to manorial juries was disallowed and declared to be unauthorised.[5] Again, if a Town Council appoints an officer, whom it has no lawful authority to appoint, the remedy of the ratepayers is to

[1] See M.C.A. 1882, sec. 140 (2), and Fifth Schedule, Part I.
[2] See Fifth Schedule, Part II., 11 of the M.C.A. 1882, and sec. 141 (1).
[3] See M.C.A. 1882, 140 (3).
[4] See M.C.A. 1882, sec. 141 (2).
[5] See R. *v.* Mayor of Bideford, 47 J.P. 756.

remove the order for the payment of his salary and get it quashed by the High Court.[1]

The minute enumerations contained in the first and second parts of the Fifth Schedule to the Municipal Code were no doubt meant to enable citizens not skilled in the law to form a correct judgment of the legality of expenditure, and are not the only indications to be found in both editions of the code that the Legislature was resolved to provide the individual member of a municipal community with an armour of defence against his representatives. This individualistic tendency begins by suspecting and ends by embarrassing representative democracy. The climax was reached in the well-known judgment already referred to, which led to the passing of the Borough Funds Act of 1872.[2] Since then it has been settled law that municipalities, if they desire to spend money upon purposes which cannot be brought under the provisions of the Municipal Code, can only obtain the requisite permission by a full compliance with the formalities and procedure required by the Borough Funds Act. In this case, as we have before observed, the difficulties which private interests might raise against the community under cover of the letter of the law are generally avoided, thanks to the prevalence of common sense and a wholesome fear of public opinion.

A good side no doubt there is to the jealousy with which the Legislature earmarks all outgoings from the municipal treasury. But there is also a bad side; and there is reason to think that a relaxation, if accompanied by a substitution of professional for amateur audit, would be not only practicable but highly advantageous. A glaring illustration of the damage done by this financial rigidity—and the letter of the law has been hardened rather than softened by interpretation—may be drawn from the attitude taken up by the courts during the last few years towards one of the most important duties of the police—that of the inspection and control of houses licensed for the sale of intoxicating liquors.

Crabbed interpretations of the law.

In August 1895 the Chief Constable of the municipal borough of Tynemouth was authorised by the Watch Committee

[1] Cf. R. *v.* Mayor of Bridgewater, 10 A. and E. 281.

[2] Reg. *v.* Sheffield Corporation, L.R., 6 Q.B. 652; p. 364.

and the Council to obtain legal assistance at the ensuing Brewster Sessions. The Chief Constable did so, and objected to the renewal of certain alehouse licenses in the borough on the ground that the premises were disorderly. The objection was successful, and the Justices refused to renew the licenses. Thereupon some of the license-holders and their lessors (the Newcastle Breweries, Limited) appealed against this decision to Quarter Sessions. On 10th October of the same year the Watch Committee met; but a motion to authorise the Chief Constable to act as respondent and to take witnesses to the hearing of the licensing appeals at Quarter Sessions was lost. However, on 15th October the Tynemouth Council resolved "that the Chief Constable, who is the respondent in the licensing appeals, be authorised to oppose such appeals, and that the Council agree to indemnify him against any costs which he may have to bear or pay in connection with the appeals as such respondent." Accordingly the Chief Constable appeared at Quarter Sessions and the appeals were dismissed with costs. The Chief Constable's expenses exceeded the amount of costs, which, on taxation, he recovered from the appealing publicans, by the sum of £132 : 5s. On 19th November the new Watch Committee resolved to direct payment by the Treasurer of this sum, though the borough funds account showed no surplus.

The Tynemouth case.

Thereupon an action was brought against the Tynemouth Corporation by the Attorney-General on the relation of the Newcastle Breweries, Limited, claiming (1) a declaration that the resolution of the Corporation to indemnify the Chief Constable against costs was *ultra vires* and void, and (2) an injunction to restrain the Corporation accordingly. The declaration and injunction were granted by the Queen's Bench Division,[1] and their order was affirmed first by the Court of Appeal (on the ground that such costs could only be paid out of the borough fund if there were a surplus), and finally, by the House of Lords,—the first and longest judgment, that of Lord Macnaghten, being founded on the theory that, although municipal corporations have been constituted to the intent that cities, towns, and boroughs might be "well and quietly governed,"[2] yet "a careful consideration of the licensing

[1] Attorney-General *v.* Tynemouth Corporation, 1898, 1 Q.B. 604.

[2] See preamble of M.C.A. 1882.

laws, with the light thrown upon the subject by the recent case of Boulter *v.* Kent Justices, in this House,[1] leads to the conclusion that the administration of those laws has been committed, not to municipal Councils as such, but to another and a different body, the Justices of the Peace." And then, after dealing with the arguments derived by Mr. Asquith from sections 140, 141, and 143, and from Schedule V., of the Municipal Code Lord Macnaghten added:—

> The obscurity, such as it is, has arisen, I think, from the superabundant caution of the draftsman, and not from any intention to relax the fetters imposed on Borough Councils as trustees of the borough fund. It would be absurd to suppose that in an Act which carefully defines and specifies the payment to be made out of the borough fund, and which certainly had for one of its objects economy in the administration of that fund, there should have been designedly inserted a provision which would obviously leave a loophole for unlimited extravagance.[2]

In the judgment of Lord Davey, in the same case, it is explicitly laid down that the only proper respondents in a licensing appeal are the Justices. A more unfortunate interpretation of the law could hardly be imagined, for in many places some magistrates are indirectly interested in the liquor traffic, and are notoriously disinclined to subordinate the interests of "the trade" to the interests of the public. Moreover, as the Justices had no fund to draw upon, there was the danger that they might be fined for the discharge of a public duty—a danger so serious that a legal circular was afterwards issued from the Home Office to Clerks of the Peace, arguing that Justices have a right to be indemnified for all costs which they may reasonably and properly incur in appearing as respondents to a licensing appeal.[3]

[1] 1897, A.C. 556.

[2] Tynemouth Corporation *v.* Attorney-General, 1899, A.C., at p. 303. In the succeeding paragraph of his judgment Lord Macnaghten disposes in a similar way of the argument based on section 2 of the Borough Funds Act 1872. The other judgments are also interesting for the light which they throw upon the limiting power exercised by the Courts upon municipal expenditure.

[3] See *Home Office Circular*, 17th Nov. 1900. The argument is based on Allsopp *v.* Preston Justices, 64 J.P. 25, and Evans *v.* Conway Justices, 1900, 2 Q.B. 224. Section 20, however, of the Licensing Act 1902 has amended section 29 of the Alehouse Act 1828 so as to secure to a licensing Justice whose decision is appealed against payment from the county or borough fund of all costs and charges which cannot be recovered from any other person, whether the appeal is dismissed or allowed.

As regards the actual form of financial organisation in a municipality, we have already, in the previous chapter, reviewed the position of the Finance Committee in connection with the whole administration. Two types were found to be distinguishable. In the first, including only very large towns like Liverpool and Birmingham, appropriations of money are made by some of the committees without much interference or control by the Finance Committee or the Town Council. In the second type, to which most municipal boroughs conform, the Finance Committee has to watch and supervise the disbursements of all the departments, as well as to discuss (sometimes in conference with the chairmen of the various committees) their requirements for the coming year, and to submit the results as estimates to the Council. But under both types of organisation, it is the duty of the Finance Committee to guard against the expenditure of any committee exceeding its estimates. And in all towns the Finance Committee exercises a central control over the issues from the municipal exchequer. In the large towns the procedure is usually as follows:—All payments are made by orders on the Treasurer (the banker of the municipality), and must be honoured by him. Every department is so organised that only one of its permanent officials, the head of the department, can incur an expense, and for that purpose he must use the particular form of order prescribed by statute. Each order-form has a counterfoil which is kept, while the order-form is sent on to the borough accountant, who compares it with the bills to see that the bills are correct.[1] Then the head of the department examines the order-form to see that the work is correct. When he has certified their correctness, the counterfoils are examined by a sub-committee of the committee which has incurred the expenditure. The sub-committee sits specially to pass the accounts of its committee and to supervise the departmental expenditure. The committee's accounts having been thus passed by its own sub-committee, have next to be submitted to the Finance Committee; and finally the statutory order-forms, having been passed by the Finance Committee, are sent to the bank. If the expenditure is incurred by a sub-committee, the

Duties of the Finance Committee.

[1] Or the comparison is made in the department.

accounts are confirmed first by the full committee and then by the Finance Committee. This statutory order-form, it must always be remembered, is not honoured by the Treasurer unless signed by three members of the Finance Committee and countersigned by the Town Clerk. Then, but not till then, does the accountant draw cheques to pay every item contained in the order-forms. In many boroughs there is an additional precaution. Every month the whole of the orders on the Treasurer made during the previous month are laid on the Council's table, and the chairman formally proposes that they be confirmed.[1] The rule is that all payments must be made by cheques drawn by the accountant. Small payments may be made in cash, but only in certain specified cases where permission to do so is expressly given in the Standing Orders.[2] The works departments, however, are often given a freer hand in the matter. Lastly, the common law has attached a special solemnity to some of the more important acts of municipal finance and administration by requiring, as a condition of their validity, the affixing of the corporate seal. Thus the appointment of the Town Clerk and the other more important officers of the Corporation should be under seal.[3] As regards contracts generally, the rule is that all contracts of a municipal corporation must be under seal;[4] but this rule has been continually relaxed by the Courts. Contracts of frequent occurrence, contracts for insignificant amounts, and contracts of immediate urgency, are all established exceptions. The Legislature requires that instruments dealing with corporation stock should, in certain cases, be under seal;[5] also, distress warrants on the goods of overseers who fail to pay their parish's contribution to the borough rate.[6] Any warrant required for the levy or collection of a borough rate should also be sealed by the corporate seal. There are no statutory regulations for the

Payments by cheques, cash, and under seal.

[1] The foregoing account is drawn from the evidence of the Town Clerk of Nottingham, given before the Royal Commission of 1894, Q. 9540 *sqq.*; cf. for the monthly confirmation Liverpool Standing Order 101.

[2] Cf. Manchester Standing Order 20.

[3] Cf. R. *v.* Mayor, etc., of Stamford, 6 Q.B. 433.

[4] Blackstone's *Commentaries*, vol. i. p. 475.

[5] M.C.A. 1882, sec. 118.

[6] M.C.A. 1882, sec. 145; or such warrant may, in the alternative, be signed by two borough Justices.

custody and use of the corporate or common seal; and the subject is, therefore, usually provided for by the Borough Council itself in the Standing Orders. Thus, by a Standing Order of the Leeds Corporation, the seal "shall be kept in some safe place secured by three different locks, the keys of which shall be respectively in the keeping of the Lord Mayor or the Chairman of the Finance Committee, the Town Clerk, and the City Accountant." The same Order also provides that all documents, etc., to which the corporate seal of the city has to be affixed, "shall be sealed" in the presence of the Lord Mayor or his Deputy, the Chairman or Deputy Chairman of the Finance Committee, the Town Clerk, the Deputy Town Clerk, and the City Accountant, or any two of them, one of whom shall be a member of the Town Council. At the same time the Town Clerk must make an entry in a book of every deed and other document to which the common seal is affixed.[1]

As a rule, and almost invariably in smaller places, the borough treasurer has a business or profession of his own, usually that of banker. Or rather the Council uses a local bank as its treasurer. The modern system of paying everything by cheque has made the appointment of a treasurer in the old sense unnecessary. Sir Samuel Johnson considers that the best plan is to amalgamate the offices of borough treasurer and borough accountant, and make the holder give up his whole time to corporation business. If the offices are kept separate, all payments into and out of the borough fund are made by or through the treasurer, but the accountant—whose department is either independent or subordinate to that of the Town Clerk—manages the book-keeping and accounts. In very large towns, however, this complete centralisation of finance in the hands of the treasurer, is not found desirable; and, in such cases, the Standing Orders may also except certain departments from the control of the city accountant, which otherwise extends over the collection of all accounts due to the Corporation.[2] Thus the size of a city and a large volume of business do affect

Borough treasurer and borough auditors.

[1] See Leeds Standing Order 48. Cf. St. Helens Standing Order 51; Sheffield Standing Order 30.

[2] Cf. Manchester Standing Order 21, which excepts, *inter alia*, "the rents, rates, and accounts" of the gas, electricity, and water departments from the control of the city accountant.

financial organisation, and may tend to devolution and to the creation of independent committees, whose book-keeping and accounts are subject only to the control of the Council and its often inefficient elective auditors.

It is by the last-named officers that the municipal finances are finally, and for the last time, checked and overhauled. The treasurer is compelled by statute to make up his accounts half-yearly "to such dates as the Council, with the approval of the Local Government Board, shall from time to time appoint."[1] Then, within one month from the date to which he is required to make up his accounts, the treasurer has to submit them, with the necessary vouchers and papers, to the borough auditors.[2] Of the three auditors, as we have seen, two are elected, while one is a member of the Council appointed by the Mayor. There is no provision to secure their efficiency; and they are, in fact, only too often mere amateurs, who are not able, even if they are zealous, to detect financial irregularities. In the large towns, however, the Standing Orders usually provide for the appointment by the Council of a professional auditor or auditors adequately paid (*e.g.* from £100 to £200 or more), and with a term of from three to five years. At Manchester, for example, it is the duty of the professional auditor "to examine and audit the entire accounts of the Corporation with due regard to all legal enactments concerning them, especially as to sinking funds and other obligations," and "to report fully to the Council, pointing out any objectionable items in the accounts, and suggesting improvements and extra safeguards." This report is to be published in full along with the treasurer's financial statements.[3] Municipal auditors have no power to surcharge.

The Municipal Code also provides that borough treasurers, after the audit of accounts for the second half-year, shall print full abstracts. An annual return of the receipts and expendi-

[1] Usually 29th September and 25th March. M.C.A. 1882, sec. 26.

[2] The sections in the M.C.A. 1882 dealing with borough accounts and audit are 25-28. The Public Health Act 1875, sec. 246, applies the above sections to the sanitary accounts of a borough.

[3] See Manchester Standing Order 23. A few Town Councils, *e.g.* Tunbridge Wells, and Bournemouth, have obtained the services of the district auditors of the Local Government Board by local Acts.

ture of every municipal corporation for the financial year ending 31st March must also be made by the Town Clerk to the Local Government Board each year, in such a form and with such particulars as the Local Government Board may from time to time direct. The Local Government Board must prepare an abstract of these returns, and lay it every year before both Houses of Parliament.[1]

The abstract and annual return.

[1] See M.C.A. 1882, sec. 28, and Local Government Act 1888, sec. 73. Failure to make the return renders the Town Clerk liable to a fine of £20, recoverable by action on behalf of the Crown in the High Court. Unfortunately, the Municipal Code does not provide for the publication either of the treasurer's abstract, or of the Town Clerk's return in the local press. However, in the year-books which are published annually by most, if not all, Borough Councils, the municipal balance-sheet for the previous years forms the principal feature. Thus, to take a concrete example in "The year-book of information for the use of the members of the Council [of the City of Sheffield] for the year 1900," we find, first, a statement of rates (*a*, borough rates; *b*, district rates) levied by the Sheffield City Council from 1877 to 1899. Secondly, comes a table showing the income and expenditure of the Corporation of Sheffield (borough and district funds) for the year ended 25th March 1899. The total income for the year was £425,960 : 8s., and the total expenditure £425,119 : 7s., leaving a deficit of £37 : 19s. The income is made up as follows :—

Borough Rates (included in Poor Rates)	£141,103	15	8		
General District Rates	246,536	18	3		
				£387,640	13 11
Her Majesty's Treasury, Conveyance, and Maintenance of Convicted Prisoners				282	3 2
Exchequer Contribution Account, for Cost of Criminal Prosecutions	£1,478	1	8		
Do. do. for Half-Cost of Pay and Clothing of the Police	19,827	1	3		
Do. do. towards Maintenance of disturnpiked Roads	1,428	0	0		
Do. do. for proportion of Excise Duties receivable under Local Taxation (Customs and Excise) Act 1890, allocated for Grants-in-Aid of Technical Instruction	6,070	13	0		
Do. do. Grant under Agricultural Rates Act 1896, contributed to Borough Fund (in relief of Borough Rate)	295	15	0		
Do. do. for portion of Surplus over Grants-in-Aid withdrawn, contributed to District Fund (in relief of the General District Rate)	8,938	0	0		
				38,037	10 11
Total income				£425,960	8 0

Apart, however, from this right to receive information about the financial condition of a municipal borough and its control over the creation of debt,[1] the central authority, it is important to observe, has no power to check municipal expenditure or to control municipal accounts. We have seen how the central control established by Parliament over the administration of public health was crowned and perfected by the institution of a central audit over local sanitary authorities. But this efficient though highly unpopular institution was not extended to municipalities either as a whole or in their capacity as urban sanitary authorities. Under the Act of 1875 the

Deficiency of central control.

The important legal division of municipal activities, according as the Council is acting in its proper capacity, or in that of urban sanitary authority, is reflected, of course, in the financial statement, separate accounts being given of the borough fund and general district fund respectively in the two following tables. The income of the borough fund for the year was as follows :—

Borough Rates	£141,103 15 8
Grants under Agricultural Rate Act 1896	295 15 0
Total income	£141,399 10 8
Less School Board Precepts	68,420 0 0
Net income	£72,979 10 8

The income of the General District fund was larger :—

General District Rate	£246,536 18 3
Exchequer Contribution Account	8,938 0 0
Total	£255,474 18 3

The expenditure from the borough fund is made up of police expenses (£20,497 : 3 : 6), and establishment expenses of all kinds, including salaries, elections, and legal expenses. The main items of expenditure out of the general district, under the heads of Highways (£74,962 : 6s.), Sewage Disposal (£40,986 : 10s.), Health Working Expenses (£45,893 : 8 :7), and Lighting (£20,745 : 7 : 3). A table follows of Sheffield Corporation Redeemable Stock, with the issues dated, their average price, and the rate of interest. Then comes an abstract of the property and permanent works for which the debt was created ; then an aggregate statement of the Loan Debt, amounting on September 29, 1899, to £4,784,106 : 14 : 6. Then follow a number of other tables, showing the revenue from the Corporation Tramways, the salaries of officials, water charges, etc.

[1] As regards expenditure out of loans obtained from the Public Works Loan Commissioners, the Local Government Board has to see that such expenditure is incurred on capital purposes only.

administration of public health by a municipal borough is subjected to the control of the Local Government Board in precisely the same way and to the same extent as that of an urban district council, with the important exception of audit. By section 246 of the Public Health Act 1875—

> Where an urban authority are the council of a borough, the accounts of the receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts.

For auditing sanitary accounts each borough auditor must be paid not less than two guineas a day. The statutory orders for payment made by Town Councils under the Public Health Acts may be removed by *certiorari* to the King's Bench Division of the High Court, like those which are made under the Municipal Code.[1]

Municipal boroughs, therefore, enjoy a larger measure of fiscal independence than other local authorities, nor can it be said that this often involves serious disadvantage to the ratepayers. In the administration of public money, honesty and economy are, at least, as prevalent in municipal as in other local bodies. There is no doubt at times a certain looseness of expenditure which would have been avoided had a more expert and independent audit been provided for by the Legislature. But the control of public opinion has become more and more efficient, until there has grown up in English municipal life a spirit of public economy and financial purity far more precious than any which bureaucratic supervision, however costly and complicated, could possibly create. What is wanted is a system which will prevent loose expenditure without destroying elasticity.

The power to borrow money and to raise loans for certain purposes is another important incident of municipal finance; and just as the Municipal Code limited the activity of Corporations so did it limit their borrowing powers, and confine them to what was then regarded as the indispensable minimum.

[1] P.H.A. 1875, sec. 246. Under the Education Act 1902 the expenditure of Borough Councils for education purposes will be audited by the Local Government Board.

That strong development of municipal activity in the nineteenth century which we have traced in the Statute Book was naturally followed by an extension of borrowing powers. Taken alone, as it stands, the Municipal Code confines the duties (as distinguished from the powers) of a Town Council to the management of corporate property, the provision of necessary establishments, and the maintenance of the local police. Borrowing, however, is only held to be permissible for permanent works, and the borrowing powers of a municipality are, in fact, limited by the Act of 1882 to the purposes of building, rebuilding, enlarging, repairing, improving, and fitting up any building (*e.g.* town hall or police station) or bridge authorised by the Act.[1] Other legislation passed from time to time, from 1835 onwards, has multiplied the permanent undertakings upon which municipal corporations may spend money and contract loans. There is but little difference of principle, however, to be found between the various enactments which confer borrowing powers upon municipalities. In the Public Health Act of 1875, in the Local Loans Acts, and in the Public Health Act of 1890, the conditions of borrowing are very similar to those laid down in the Municipal Code. By adopting Part V. of the last-named Act any borough or other urban authority is enabled in the exercise of its borrowing powers to create and issue stock, which could not previously be done without a private Act of Parliament. Stock so created must be in pursuance of a resolution of the urban authority, and must be issued at a price not lower than 95 per cent, redeemable at par after a fixed period, and otherwise in accordance with regulations prescribed by the Local Government Board.[2]

Borrowing powers of municipal corporations.

Returning now to the Municipal Code itself we find the following principles of municipal borrowing laid down or implied:—

[1] See M.C.A. 1882, sec. 120; and as regards bridges, sec. 119; and the Local Government Act 1888, secs. 3, 6, 11, and 31-39. Some bridges within non-county boroughs are under the County Councils.

[2] See Public Health Acts Amendment Act 1890, sec. 52. The regulations of the Local Government Board under sub-section (1) of sec. 52 were made in 1891. In 1901, however (in consequence of the rise of the rate of interest), the Local Government Board made further regulations which allow urban authorities with its consent to issue stock at a price lower than 95.

1. A Municipal Corporation may only borrow money for permanent works.[1]

2. Such works must be necessary for the proper execution of statutory duties or powers.

3. Except where powers are obtained by a private Act, the approval of the Local Government Board is required for the creation of debt.[2]

4. Municipal loans must be repaid in instalments spread over a period of years.[3]

5. The money borrowed, whether from the Public Works Loans Commissioners or from the private investor, is secured by mortgages on borough property, revenues, or rates. A mortgage on the real property of the Corporation is the older form.

It is, however, important to observe that the Municipal Corporations Acts in making provision for the creation of municipal debt did not close the doors already opened by private Bill legislation. A municipality can still seek and obtain money from its credit by a local Act; and although Parliament will not deviate very widely in special legislation from the principles laid down in public Acts, yet there is naturally much greater elasticity as to purposes of expenditure, amount of total indebtedness, and periods of repayment, where a particular town seeks particular powers to suit its own particular circumstances.

[1] Cf. Public Health Act 1875, sec. 234 (1).

[2] See M.C.A. 1882, sec. 106, where Local Government Board is to be read for Treasury by section 72 of the Local Government Act 1888. The annual reports of the Local Government Board show that a great amount of municipal debt is contracted under the provisions of private (local) Acts. Thus, in the year 1899, while the Local Government Board sanctioned loans to boroughs and urban districts to the amount of about £7,300,000, borrowing powers of above five millions in addition were granted to the same bodies by Parliament through private Bill legislation. The periods prescribed for repayment varied from two to fifty-five years.

[3] Thirty years under the M.C.A. 1882, sec. 112; under the Public Works Loans Act 1875, sec. 11, the maximum is twenty; under the Public Health Act 1875, it is sixty. Of late years there has been a tendency to extend the period on the ground that the benefit of permanent works is often felt after the thirty years' term expires. Thus under the Housing of the Working Classes Act 1890, sec. 25 (5), loans lent to a local authority by the Public Works Loan Commissioners may be repaid "within such period, not exceeding *fifty years*, as may be recommended by the confirming authority." The Local Government Board, it may be added, gives a generous interpretation to the word "permanent," including steam-rollers and fire-engines.

The Public Health Code, which so vastly extends the sphere marked out for boroughs by the Municipal Code, confers at the same time additional borrowing powers. Loans under the Act must be for permanent works, are subject to the approval of the Local Government Board, and must be repaid, by instalments or by a sinking fund, within a period prescribed by the Board, but not exceeding sixty years. The Board may not give its sanction until one of its inspectors has held a local inquiry and reported. It is also provided that the sum borrowed "shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed."[1] Thus theoretically a limit is set to the amount of debt which a municipality may incur for expenditure under the Public Health Acts. Money borrowed under the Public Health Acts is to be repaid in one of three ways: (1) By equal annual instalments of principal; (2) By equal annual instalments of principal and interest combined; (3) By a sinking fund under which the annual amount set aside shall suffice with accumulations to repay the loan at the end of the term.[2] All mortgages under the Act must be by deed and sealed by the common seal of the local authority. A register must be kept by the local authority of all mortgages and transfers of mortgages charged on each rate.[3] If principal or interest due from the local authority is not paid within six months of the time when it becomes due, the mortgagee may (without prejudice to any other mode of recovery) apply to a court of summary jurisdiction for the appointment of a receiver, who may collect and receive the rates appropriated to such payment until principal or interest and all costs are fully paid.[4]

The general intention of the whole body of English law

[1] P.H.A. 1875, sec. 234 (2); but by section 235 additional sums may be raised, without the consent of the Local Government Board, by mortgaging land and other property for sewage disposal up to three-quarters of the amount of the purchase money.

[2] P.H.A. 1875, sec. 234, and circular of L.G.B. 30th September 1875.

[3] P.H.A. 1875, secs. 236-238.

[4] P.H.A. 1875, sec. 239; such an application will not be entertained unless the sum owing amounts to £1000.

authorising and regulating local debts is, on the one hand, to provide adequate safeguards against rash borrowing, and, on the other hand, to enable local authorities to borrow as cheaply as possible. The policy of keeping down debt is obviously a main part of the policy of keeping up and improving credit. There is, however, a special contrivance for the assistance of local authorities in the shape of a Central Board called the Public Works Loan Commissioners, newly constituted by the Public Works Loans Act 1875. That Act consolidated a number of previous statutes dating from 1817,[1] all passed for the purpose of providing local bodies with money for specified purposes at moderate rates of interest by lending national money supplied by Parliament on easier terms than they would be able to obtain in the open market. The duties of the Loan Commissioners are defined by the Public Works Loans Act of 1875, and by certain Amending Acts (National Debt and Local Loan Acts 1887-97). The rates at which the Commissioners are allowed to lend money to local bodies have of course been reduced from time to time, the minimum rate at which they had discretion to lend being for a time only $2\frac{3}{4}$ per cent, until the suspension of the Sinking Fund and a heavy war expenditure in 1899 and the following years lowered the national credit. The minimum rate was then raised to $3\frac{1}{4}$ per cent. By section 6 of the Act of 1887,[2] when Parliament has authorised the Loan Commissioners to make advances, the sums required must be issued from time to time by the National Debt Commissioners, and the following section (7) creates and places under the control of the National Debt Commissioners a Local Loans Fund, to which are carried all sums paid in or applicable towards the discharge of the principal or interest of any local loan granted either before or after the passing of the Act. Lastly, under the Act of 1875 [3] the Loan Commissioners, on default of payment, may take possession of the mortgaged property, or may make and levy the mortgaged rate.

Principles of local loans.

[1] 57 Geo. III. c. 34 and c. 124. These Acts were passed to relieve distress by advancing money to corporations, companies, or parishes through Commissioners of the Treasury for the employment of the poor in fisheries, mines, drainage, and public works.

[2] The National Debt and Local Loans Act 1887 (50 and 51 Vict. c. 16).

[3] Public Works Loans Act 1875, secs. 21-26.

Such are the main provisions of the law governing municipal indebtedness. The statutes which contain them are numerous, enacted at different times and for different purposes. But there is no doubt about the main conclusion and result. In theory at least English law subjects municipal bodies in the exercise of their borrowing powers to a real central control. Municipal autonomy does not extend to the creation of municipal debt. But the letter of the law loses much of its severity in practice. The general intention of the Legislature to keep down and control municipal borrowing is not carried out at all stringently in the case of large towns, whose obstinate independence and reluctance to acknowledge a superior have created unsurmountable obstacles to the tide of bureaucratic invasion. Local interests and the democratic character of the municipal suffrage have combined to extend the scope of municipal activity, which in its turn involves the necessity of raising large sums of money from time to time for the purchase of undertakings or the construction of public works. There is also a widespread feeling both in and out of Parliament, that the Councils of the larger boroughs at any rate are far more competent than any other authority to estimate and prescribe for the requirements of their constituencies. The danger of a borough becoming overloaded with debt is greatly diminished if not entirely averted by the provisions for repayment, which acquaint the electors, who are also the ratepayers, very speedily with the financial effects of an ambitious policy. The remedy is supplied by the November ballot-boxes. Thus that zeal for the sound and thrifty management of public business, which is a national tradition in England, is stimulated and fortified by a democratic constitution in which rateability gives a vote, and a vote implies rateability. Tax-gatherers, or rather rate-collectors, far more than any Central Boards of Control, are the real schoolmasters of municipal policy.

Another factor which makes against central control and in favour of local autonomy is private Bill legislation. This pliant and flexible instrument has done much for municipal progress by enabling enterprising boroughs to slip away from the iron uniformity of general law, and to provide not only new work but new kinds of expenditure, and not only new

kinds of expenditure but new borrowing powers. Indeed, additional administrative powers almost inevitably involve, and are almost invariably accompanied by, additional financial powers, whether the Act conferring them is obtained by way of Provisional Order or Parliamentary Bill. The High Court of Parliament, acting through the Committees which sit and decide upon local Bills, is the supreme guardian and protector of public interests, the final Court of Appeal for the burgesses of a municipality, and their representatives in relation to their administrative needs and aspirations. It is a peculiarity of the British constitution that, instead of a bureaucratic department of the State, the national Parliament considers as a judge and decides as a law-giver upon the local Bills or petitions promoted and presented to it from time to time, and thereby exercises an operative control over the manifold activities of town corporations. Here, then, is Parliamentary self-government supervising municipal autonomy, the nation as a whole acting in concert with local corporations,—a picture full of instruction to the student of modern democracy as it actually exists in England.

CHAPTER IX

THE FINANCE OF MUNICIPAL GOVERNMENT

Rates and Taxes

THE expenditure incurred in fulfilling the powers and duties conferred upon a Town Council by the Municipal Code is charged in the first place, as we have seen, upon the ordinary revenues which flow into the borough fund. But as these ordinary revenues (rents, tolls, fines, and the like) may be and almost invariably are insufficient for the purpose, the Municipal Corporations Act provides that, if the borough fund is insufficient to discharge the expenses of administration, the Council "shall estimate as correctly as may be" what additional amount is required; and "in order to raise that amount the Council shall, subject to the provisions of this Act, from time to time order a rate called a borough rate to be made in the borough."[1] The power of levying a borough rate, conferred by the Act of 1835, confirms the administrative independence of municipal corporations by enabling them to enforce direct contributions from the burgesses. It is to be observed, however, that in making this new statutory rate, which was modelled on the older county rate, the Legislature was not only conferring a general power, but abolishing a number of exceptional powers and privileges—that is to say, the new borough rate absorbed such vestiges of the old powers of rating at common law as were still exercised in municipal boroughs by some of the unreformed corporations. It substituted a simple, universal,

The abolition of common law rates in 1835.

[1] M.C.A. 1882, sec. 144, which preserves the effect of M.C.A. 1835, sec. 92.

statutory autonomy for a customary autonomy which was neither simple nor universal.[1] Later legislation, both of a public and private character, which so widely extended the sphere of corporate activity, led necessarily to a great increase of expenditure, and this again led of equal necessity, not only to that enlargement of borrowing powers which we have just described, but also to an enlargement of rating powers; for as it is of the essence of the English law that a municipal corporation has only such obligations and rights as are expressly assigned to it by Act of Parliament, so the right to impose and collect a rate can only be exercised for purposes of expenditure strictly incidental to those statutory powers and duties to which the produce of the rate is assigned by Parliament. Since the abolition of municipal rights and rates at common law by the Code of 1835, there has been no such thing as an autonomous power within the municipality itself of extending its sphere of activity, or imposing rates without the authority of Parliament.

In tracing the growth of rating powers which has accompanied the extension of the administrative powers of municipal boroughs, we may again distinguish three main sources or channels of development.

1. The rating powers of a Town Council under the Municipal Code.

2. The rating powers of a Town Council under public health legislation and other general Acts.

3. Special powers of rating conferred upon individual towns by local Acts.

Three principles of rating.

The scheme of taxation provided by the Municipal Code assumes, as we have seen, that the borough rate is only a secondary instrument of municipal finance; it is subsidiary to the borough fund, and is to be based on an estimate made by the Council of the amount (if any) which, in addition to the borough fund, is required to meet the expenditure for the year. In other words, if the ordinary rents and revenues of the borough are insufficient to meet the expenditure legally incurred, the

[1] Cf. Cannan's *History of Local Rates in England*, p. 103. The "Chamberlain's rate" in the borough of Folkestone is one of the customary municipal rates mentioned in the Commissioners' Report of 1835.

deficit is to be made good by levying a rate upon the burgesses, the proceeds of which flow like ordinary revenues into the borough fund. Rates, however, are the most important of all the sources of municipal income, though in this formal sense they are properly described as subsidiary. Another principle of the law of rating is not peculiar to England, but is common to all modern systems of local taxation. Municipal taxes may only be raised for lawful purposes—that is to say, for purposes recognised as municipal by law. The third principle, which applies to all local authorities in England, is that rates must be levied for current expenses. Rates are not for past but for present expenditure. Thus the borough rate may not be applied to expenditure more than six months old.

A borough rate may be made retrospectively, in order to raise money for the payment of charges and expenses incurred, or which have come in course of payment at any time within six months before the making of the rate.[1]

The borough rate is primarily a mere appendix to the poor rate,[2] being based upon the poor rate valuation list.

The borough rate.

The Council shall assess the contributions to the borough rate on the several parishes and parts of parishes in the borough in proportion to the total annual value of the hereditaments in each parish or part which are rateable to the poor, or in respect of which a contribution is made to the poor rate.

That value shall be estimated according to the valuation list (if any) in force for the time being, and if there is none, according to the last poor rate.[3]

But the borough rate may be based on an independent valuation undertaken by the Council itself. "If, for any reason, the Council think that the valuation list or poor rate is not a fair criterion of value, they may cause an independent valuation to be made."[4] For this valuation, however, no

[1] M.C.A. 1882, sec. 144 (3).

[2] For the poor rate, see index to this and the second volume.

[3] M.C.A. 1882, sec. 144 (4) and (5).

[4] M.C.A. 1882, sec. 144 (6). The two following sub-sections (7 and 8) give powers for making the independent valuation by enabling the Council to inspect the books of the overseers, to call the overseers before them to give evidence, and to enter on view and value any land chargeable to the borough rate.

independent organisation is provided by the Municipal Code, and the Council is really dependent upon the overseers for "the independent valuation," and also, as a rule, for the collection of the rate. If the overseers of a parish think their parish has been over-assessed or unequally assessed to the borough rate, they may appeal to the Recorder at the next Quarter Sessions of the borough, or if there is none, to the next Quarter Sessions of the county, against that part of the rate which affects their parish.

Although the valuation for all rates within a borough is almost invariably the same, the poor rate valuation being adopted, many differences exist in the modes of collection. Until recent years the borough rate and the special rates have been usually levied and collected by the overseers, and the amounts collected paid over by them to the Council.[1] But the Town Council acting as urban sanitary authority has full discretion, under the Public Health Act, to organise the collection of the general district rate as it pleases; and as regards the collection of rates within the borough a more economical and convenient system has begun to prevail, especially in the larger towns. Statistics were given to the Royal Commission on Local Taxation by Mr. Jeeves (now Town Clerk of Leeds), on behalf of the Association of Municipal Corporations. His evidence deals with the collection of rates and the cost of collection in 106 boroughs for the year 1896. From this it appears that the various rates which contribute to the borough fund are collected either by the borough councils or by the poor law authorities. The cost of collection, of course, varies greatly according as the amounts raised are large or small; but the borough authorities are found, as a rule, to collect more cheaply than the poor law authorities. Thus, in the 106 boroughs reviewed by Mr. Jeeves, the Borough Councils collected in 1896 £3,051,130 of rates at a cost of £32,776, or 1·07 per cent, while the overseers collected £1,863,348 at a cost of £41,657, or 2·24 per cent.[2] The difference is easily explained. "The parochial

Municipal Councils as rate collectors.

[1] For details as regards the collection of the borough rate, see M.C.A. 1882, sec. 145, where a parish is wholly in a borough, and sec. 146 (now obsolete), where a parish is only partly in a borough.

[2] See First Report of the Royal Commission on Local Taxation, c. 9141 (1899), p. 56.

system of making and collecting rates," as Mr. Dawe, the Town Clerk of Hull (speaking of his own town), observed to the same Commissioners, is wasteful, "inasmuch as there is a separate rating establishment with separate officers for each of the ten parishes within the borough."[1] At Tunbridge Wells there used to be eight collections in the year. Now there are two. The Tunbridge Corporation collects at one and the same time and by one demand note the borough rate, the general district rate, and the water rate. The poor rates in the two Unions are collected by two collectors appointed by the Board of Guardians. The result is that "the cost to the Corporation of collecting £42,000 per annum is £315, and the cost to the Guardians of collecting £16,000 per annum is £410."

Of late years considerable improvements and economies in the collection of rates have been effected by many Borough Councils; but a complete reform is only possible where the Poor Law Unions are coterminous or can be made coterminous with the borough. Where the Union, or Unions, and the borough are not coterminous, a single area for rating purposes can be obtained through a borough extension, carried out by means of a Provisional Order or a private Bill. Parliament can then sanction an amalgamation of the parishes or townships, and give the Corporation power to appoint overseers, assistant overseers, and rate-collectors. Where the Union and the borough are not coterminous, but the borough forms part only of one Union, a single area for rating purposes can also be obtained by the amalgamation of the townships or parishes into which such borough is divided into one township or parish. In other cases, apart from the amalgamation of the Unions, the only simplification that can be effected is to reduce by amalgamation the number of townships or parishes into which the borough is divided to the same number as the Unions of which the borough forms part, and even this partial simplification will be found to afford considerable advantages. The amalgamation of one township with another can be

[1] The same witness suggested that a saving might be effected, not only by unification of rates and valuations, but also "by serving the demand notes through the post, and by allowing a rebate or discount to the ratepayers who pay their rates within a given time at the town hall or send their money through the post" (*id.* p. 56).

effected under the provisions of the Local Government Act 1888, and it was apparently intended by the Local Government Act 1894 to make the whole operation (for the simplification of the arrangements for the assessment and the collection of rates) possible for all boroughs by means of an Order of the Local Government Board with respect to the appointment of township officers. It was apparently intended by the Local Government Act of 1894 to make the whole operation possible for all boroughs by means of a provisional order, but unfortunately the sections are not sufficiently explicit for the purpose.[1] How the operation may be effected, and what economies may be and have been achieved, were briefly described as follows by Mr. Jeeves in a minute prepared by him (when Town Clerk of St. Helens) for the Royal Commission on Local Taxation :—

Savings at St. Helens.

> Until 1893 in St. Helens, the borough of which I am Town Clerk, we had four townships, with each a set of overseers, and an assistant overseer, each of whom laid and collected a poor rate, and the Corporation laid and collected rates for their own purposes.
>
> By an Act obtained in that year all the townships were amalgamated, and the Corporation obtained the powers of the Vestry, and of appointment of overseers and assistant overseer and rate-collectors, together with authority to use one rate-book and one demand note for all rates. Four members of the Finance Committee are appointed overseers, who in practice, though not by statutory provision, are also made responsible for the collection of the corporation rates; the services of one only of the assistant overseers was retained, and he and the staff already engaged in the laying and collection of the corporation rates were constituted the Rating Department to take charge of all overseers' work, and of the laying and collection of all rates. This staff has been found to be amply sufficient for the work. The work of the overseers has been better done, as attested, as to the rating matters by the Clerk of the Guardians and the District Auditor, both in the matter of the valuation lists, and of the collecting; and, as attested, as to the registration work, by the fact that the percentage of errors in the overseers' lists, as shown after revision, is now only between 3 and 4 per cent.
>
> Moreover, there has been effected a saving of upwards of £700 per year, or about equal to a rate of two-thirds of a penny in the £, made up as follows :—

[1] See L.G.A. 1894, secs. 33 and 34. A small but increasing number of boroughs have, however, endeavoured to attain the object by private Bill legislation, in several cases (*e.g.* Bristol and Bradford) with success. For the above paragraph I am much indebted to suggestions from Mr. Jeeves.

Rating Work

		Saving.
Remuneration of assistant overseers	£250	
Expenses for offices, those of the Corporation being used	80	
		£330

Registration Expenses

Remuneration of assistant overseers	£270	
Printing of overseers' lists by obtaining tenders	50	
Printing of overseers' lists by obtaining further tenders in connection with the burgess-roll and Parliamentary register	60	
		380
Total annual savings		£710

That is to say, the saving is larger than the present total expenditure in respect of overseers' work and of corporation rates.

In the matter of assessments, too, when the overseers of the one township came to go into the existing valuation lists considerable variance was found; in one case the work had been kept fairly up to date by supplemental lists altering assessments as the value had gone up; in other cases, in varying degrees, such supplemental lists had been more or less carelessly done. The net result has been a considerable increase in the township assessment, which is a complete answer to those who say that the assessment would be put down to reduce the borough contribution to the Union. The interests of the borough in keeping up for its own purposes the assessment are far too great for this. Further, as an instance of looseness of supervision, it was found that for two years an assistant overseer had drawn remuneration for work not done.[1]

The procedure under the Local Government Acts of 1888 and 1894, before referred to, is not only complicated and somewhat uncertain, but also involves two distinct operations, of which in the result possibly one may be successfully promoted and the other not. Therefore in several cases it has been thought better, notwithstanding the provisions of the Local Government Act 1894, to proceed by private Bill in the same way as was done at St. Helens in 1893. There would seem to be no reason why some simple and definite form of procedure should not be provided to enable all this to be effected upon the resolution of Borough Council. If the whole organisation of local taxation within the borough were entrusted to the Council of the borough, the distinctions between the borough rate and the poor rate might cease entirely, and provision be made not only for one assessment through-

[1] *Id.* pp. 55, 56. After the change licensed property in the borough of St. Helens was for the first time raised to a proper assessment.

out the borough, but also for the collection of all rates, including the general district rate, on one demand note and by one set of collectors. If the whole organisation of local taxation within the combined district were entrusted to the Borough Councils, the distinctions between the borough rate, the general district rate, and the poor rate, might cease entirely as regards their basis and collection, and need only be maintained for purposes of assessment, expenditure, and account.

Rating owners.

The only other provision with regard to the borough rate which need be mentioned is that contained in section 147 of the Municipal Code, which enables Borough Councils to rate owners of small tenements instead of occupiers in the same way as in the case of the poor rate. The "owner" compounds and pays the rates of his tenants, getting an abatement or deduction of 15 per cent, and a further 15 per cent if he agrees to pay rates for a year whether his rateable hereditaments are occupied or not.[1]

Borough contributions to county funds.

Boroughs not having a separate court of quarter sessions, and also boroughs of less than 10,000 inhabitants, whether with or without a separate court of quarter sessions,[2] are liable to the county rate as well as to the borough rate. Larger quarter sessional boroughs, and even county boroughs, are liable to contribute to the county fund for some common or general county purposes.

The mode of payment by the larger boroughs to the county is as follows. The treasurer of each county sends to the Borough Council an account showing separately:—

(*a*) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county; and

(*b*) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for those purposes and all sums received in aid or on account of the

[1] M.C.A. 1882, sec. 147, which introduces the compounding system simply by applying the Poor Rate Assessment and Collection Act 1869, sec. 4, to the borough rate. Other rates, such as the police rate, though sometimes levied separately, are not really distinguishable from the borough rate or the poor rate.

[2] See M.C.A. 1882, secs. 150, 151, and Local Government Act 1888, sec. 38. On contributions of larger boroughs and of boroughs generally to the county funds, see Part II. of the Local Government Act 1888, secs. 31-39, and M.C.A. 1882, secs. 150-153, and vol. ii. of this work, p. 104 *sqq.*

county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received.

Having sent in this account the county treasurer makes an order on the Borough Council for payment of the sum so shown to be due from the Municipal Corporation to the county council. "The Council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund." And if the order is not complied with, two Justices of the county may, on the complaint of the county treasurer, issue a warrant to the borough treasurer requiring him to pay the sum mentioned in the order, and also an additional tenth mentioned in the warrant.[1]

The general district rate.

The second of the three main forms of local taxation in boroughs is the general district rate, which the Town Council has authority to impose as the urban sanitary authority under the Public Health Acts. Unlike the borough rate (which is charged, except during the continuance of the Agricultural Rates Act, at an equal amount in the pound upon all properties) the general district rate is a differential rate—agricultural land, railways, and canals being assessed at one-fourth only of their annual value. This rate ordinarily makes the largest individual contribution to the borough fund; but its consideration may be reserved for a later chapter on Urban District Councils, which find in it their primary source of revenue. The proceeds of the general district rate do not usually go into the borough fund.

Local rates.

The annual revenue derived in nearly all boroughs[2] from these two general rates—the borough rate and the general district rate—is supplemented in very many towns by special local rates levied in pursuance of some adoptive or local Act. Some of these rates, such as the so-called water rates, are rather rents or payments for value received. But water rates may be laid on all houses supplied

[1] Cf. M.C.A. 1882, sec. 153, and L.G.A. 1888, sec. 32 (8).

[2] Besides the exceptional cases in which other revenues make one of these principal rates unnecessary, there are boroughs which before the Act of 1875 levied a single rate, the borough rate, or a rate framed like the general district rate, for all purposes, and continue to enjoy this wise and simple arrangement. Many county boroughs levy improvement rates under special Acts in substitution for the general district rate.

with water according to their rateable value, in which case the only practical difference between a water rate and, say, a borough rate is that the former does not necessarily extend to all occupied houses.

In addition to but in connection with the income which it derives from rates, a municipal borough has another important source of revenue. The burden of the ratepayer is relieved by grants from the national to the local purse. These grants, as we have seen in the historical part of this work, were sanctioned by Parliament at divers times and assume divers forms. Nor can it be said that there is any uniform principle underlying them. Parliament has merely multiplied grants-in-aid in response to the demands, real or imaginary, of local ratepayers with less and less regard to principle and system. The legislation of 1888 created not only county councils, but also a new class of boroughs which it called "county boroughs," and assigned considerable revenues to the "Exchequer Contribution Account" of each county council and county borough council. These revenues consist of—

National contributions to borough funds.

1. To county boroughs.

1. The license duties collected within the area of the county.
2. A contribution from the Estate Duty Grant.
3. A contribution from the Beer and Spirit Surtaxes.

But it will be more convenient to treat this subject in a later chapter on County Council Finance, in which we shall speak also of the adjustments between county councils and county boroughs. Here, then, we need only describe those grants-in-aid of municipal expenditure which are received by all (or nearly all) boroughs alike. They fall into two principal classes under two principal heads:—

2. To all boroughs.

1. As urban sanitary authorities all boroughs may[1] receive a grant of half the salaries of their medical officers of health and inspectors of nuisances.
2. As police authorities all boroughs except those of the smallest class receive (in addition to a grant for police superannuation[2]) a grant of half the cost of the pay

[1] Twenty-two county boroughs out of 64, and 200 others out of 250, actually receive the grant.

[2] The allocation of the grant of £300,000 per annum for police superannuation between the metropolitan and provincial police forces is provided for by the

and clothing of the borough police, assuming that the necessary certificate of efficiency is awarded by the Home Secretary.

Other subventions received incidentally by ratepayers in towns will be noticed in connection with poor law and education. Here a few words only need be said as to the general effect of subventions. Subventions, or grants-in-aid, are paid out of the national revenue—that is to say, out of taxes—in relief of the local revenues—that is to say, of rates. The poorest part of the community, which does not directly contribute to the rates, is thus called upon to contribute to the relief of rates. The rest of the community which pays both rates and taxes contributes a sum which would not otherwise be necessary from one purse in order that another sum, either greater, or less, or equivalent, may be left in the other purse. In their final report upon Local Taxation two of the Commissioners, Sir Edward Hamilton and Sir George Murray, show by the two striking tables how unequal as between counties and county boroughs has been the incidence of the subventions assigned to local authorities by the legislation of 1888, 1890, and 1896 :—

TABLE I.

Administrative county.	Receipts in 1899-1900.		Assessable value (1899), per inhabitant (1901).
	From revenue assigned under the Acts of 1888 and 1890.	From revenue assigned under the Agricultural Rates Act 1896.*	
	Per inhabitant (1901).	Per inhabitant (1901).	
	s. d.	*s. d.*	£ *s. d.*
Rutland . .	6 8	3 6	7 6 0
Westmoreland .	5 7	2 3	6 16 0
Berkshire . .	6 6	1 3	5 11 0
Cornwall . .	3 11	2 3	3 5 0

* Including the grants to all the spending authorities within the county, adjustments having been made in the case of overlapping areas.

Local Taxation Customs Excise Act of 1890 ; and the basis of the division of the sum (£150,000) allotted to the provincial forces will be found in the Police Act of 1890, which contains an elaborate scheme of deductions from pay and allowances.

TABLE II.

County borough.	Receipts in 1899-1900 from revenue assigned under the Acts of 1888 and 1890. Per inhabitant (1901).	Assessable value (1899), per inhabitant (1901).
	s. *d.*	£ *s.* *d.*
Leeds	2 10	3 15 0
West Ham	3 3	3 19 0
Leicester	3 0	3 15 0
Cardiff	3 5	6 5 0
Oldham	2 7	3 4 0
Burnley	2 0	3 13 0
Barrow-in-Furness	2 10	4 0 0
Gateshead	2 4	3 0 0

It is impossible to deny the unfairness and inequality of a system which produces results so absurd as those shown above. "If there is any county in England," the Commissioners observe, "in which the burden of these services is easily borne, it is probably Westmoreland. Yet Westmoreland receives grants which, in proportion to population, are much more than twice as high as those assigned to such a necessitous area as West Ham." It is not surprising that the London County Council and the City Councils of Manchester, Bradford, Bristol, and many other towns passed resolutions in the early part of the year 1901 against the renewal of the Agricultural Rates Acts.[1] The Government, however, turned a deaf ear to these protests and renewed the Acts for another period of four years.

Before that period ends some attempt is certain to be made at a thorough revision of the laws which at present govern the financial relations between the national and local exchequers. Upon this problem, which promises so much embarrassment to the future legislator, further light will be thrown in later chapters upon County Finance, and upon the growth of local expenditure and local indebtedness.

[1] The English Act (59 and 60 Vict. c. 16) was passed in 1896 and renewed in 1901.

CHAPTER X

THE ORGANISATION OF JUSTICE IN MUNICIPAL BOROUGHS

A SURVEY of the English municipal organisation naturally concludes with a legal chapter and with a description of certain tribunals. Municipal government has been associated with the administration of justice from very early times, and that association helps us to understand the municipality as an integral part of the constitution. Even in Norman England municipalities had begun to form independent districts for purposes of taxation and legal business, and consequently to hold a distinct position in the eyes of the law, standing out like islands from the larger and more ancient jurisdiction of the county. When at length his office was securely established, and the Justice of the Peace had become the sole local organ for the execution of public authority, a division was made in this office also to correspond with the division already recognised between boroughs and counties. Many boroughs were exempted from the jurisdiction of the County Bench, and were granted their own commissions of the peace and their own quarter sessions; and the system remains almost unaltered in its main features. The local organisation of justice, if we omit the assizes and the new county courts, is an inseparable part of the general system of local government. Counties and towns are to-day, as they have for centuries been, the local units for the administration of law. And they are not merely separate jurisdictions: they are also, primarily at least, the areas upon which the cost of jurisdiction is levied.

Borough jurisdictions.

Justice is in England a perfectly uniform conception. There is no special court to deal with special branches of

administration. Public authorities are not exempted from ordinary tribunals. In a word, there are no courts of administrative law. On the contrary, the local depositories of judicial power, the Justices, are competent to decide cases in which a public authority is concerned in precisely the same way as cases in which individuals only are concerned. Indeed, the province from which the Justice of the Peace is wholly excluded happens to be the province of purely civil and private suits and claims.[1] Though the bulk of their work relates to offences strictly criminal, the Justices also deal with matters which are only quasi-criminal[2] or not criminal at all. Their non-criminal or administrative work consists chiefly of licensing, rating, and questions arising out of the administration of the Poor Laws and Education Acts.

The Borough Bench.

The Borough Justices have formed for centuries an organic part of municipal institutions. Their existence, as we have seen, was incidental to the special and privileged position which the grant of a municipal charter conferred upon towns previously under the government of a County Bench. It follows that the powers of Borough Justices varied from town to town; for in each there was a separate origin and a separate development. The Act of 1835 introduced a certain amount of uniformity; but diversities, and even anomalies, of much ambiguity are still to be found. The combination of judicial with administrative functions in the person of the Justice of the Peace had a far-reaching and profound effect upon the organisation of the Borough Council as well as of the Borough Courts. As in the counties, so in the towns, the interpretation of the law was confused with its administration; and in the boroughs, until the Act of 1835, this confusion was perhaps worse confounded than in the counties, owing to the association of corporate offices with the office of magistrate. Nineteenth century legislation drew a sharp line between justice and administration. The work of magistrates, both in the county and in the borough, is now almost entirely judicial.

The severance of justice from administration.

[1] Bastardy cases and certain disputes between employers and workmen under the Employers and Workmen Act of 1875 form an exception.

[2] An instance of a quasi-criminal proceeding would be an order to abate a nuisance.

Every county division, every considerable borough, is now an area for two distinct and independent purposes, of two distinct and independent bodies—an area administered by the borough or county council and an area judged by the borough or county bench.

Such a change has naturally been accompanied by changes in the relationship of a borough to its county—a relationship which it will be necessary to examine in order to show how the position, first of the judicial, and secondly of the administrative, authority in a borough is defined in reference to that of the corresponding county authority. Here we shall deal with the first part of the question only. The second part of the question is to be answered by considering the effect of the County Councils Act of 1888 upon the Municipal Code, and that consideration will be most conveniently deferred until we come to deal with county government as a whole. For our present purpose we may forget the reform of 1888 and keep our eyes fixed upon the reform of 1835. Before that time the exemption of municipal boroughs from county jurisdiction was less complete in some towns than in others, depending, as it did, not upon any general rule of law or legislation, but upon the individual provisions of each individual charter. First there were a few towns which by royal favour had been so completely taken out of the county that they had the right to elect a sheriff of their own and enjoyed the title of counties. These towns were highest in the municipal hierarchy.[1] The remainder—the great majority—of the towns were inferior to these in dignity and independence; but their relationships to county jurisdiction exhibited, amid an embarrassing number of minor variations, three main types which had developed under the dominating influence of the magisterial office, and indeed were distinguished from one another according as a separate commission of peace and a separate quarter sessions had been granted or not. Thus, after the counties of towns or cities, English municipalities stood in the following order of relative independence:—

The municipal hierarchy.

[1] At the present time there are eighteen such counties of boroughs and cities, which must be distinguished of course from the new county boroughs, though the distinction is no longer of constitutional importance.

1. Boroughs with quarter sessions and a borough bench.
2. Boroughs with a borough bench only.
3. Boroughs without either, and subject therefore to "county" Justices in both petty and quarter sessions.

In towns possessing a separate commission of the peace the composition of the borough bench was not uniform. But, generally speaking, the Mayor, Aldermen, and all members of the close corporation united with the corporate office that of Justice of the Peace; and here lay the peculiar seat of judicial corruption in English towns of the eighteenth century. It was removed in 1835 by two cuts of the healing knife of reform. First, magisterial was severed from corporate office. Secondly, administrative work was withdrawn from borough magistrates and handed over to Town Councils.[1]

Since 1835 the borough bench has been appointed like the county bench—that is to say, by nomination of the Lord Chancellor. The only relic of the old system is the position of the Mayor as *ex officio* chairman of the borough bench. Almost all the administrative work which continued to be done in counties by Justices of the Peace until 1888 was carried out after 1835 in boroughs by the municipal council. It is true that licensing and some other administrative work, which were regarded by English law as judicial or quasi-judicial acts, remained to the borough magistracy, but these survivals have grown more and more anomalous with every increase in the administrative powers and activities of the representative body. If we except licensing and police, the consequences to local government proper of the differences in the three types enumerated above are almost negligible. The important thing is that legal prosecutions and complaints arising from or incidental to municipal government are decided by Justices of the Peace, whether "in" or "out of" sessions, subject to the revision of the superior courts.

In 1894, if we now revise our classification and replace the boroughs in an ascending order of dignity, there were seventy-five small towns which possessed neither a separate commission of the peace nor a separate quarter sessions. One hundred and twenty-three had a separate commission of the peace but no

[1] Lord John Russell, it will be remembered, even proposed, but failed to carry, a transfer of licensing powers to the Town Councils, see pp. 125-127.

separate quarter sessions. A hundred and five towns had both. The first or inferior class does not fall within the scope of this chapter, because it is simply a part of the county for judicial purposes, being subject to the county Justices and the county quarter sessions. In Part VIII.[1] of the Municipal Code on "administration of justice" it was not necessary to deal separately with this class, the Legislature merely providing that "where a borough has not a separate court of quarter sessions [and, therefore, *a fortiori* where it has not a separate commission of the peace], the Justices of the county in which the borough is situate shall exercise the jurisdiction of Justices in and for the borough as fully as they can or ought in and for the county."

Powers of county Justices in boroughs.

The county Justices, therefore, have full legal jurisdiction in boroughs of both the first and second class; but in practice these powers are seldom exercised in boroughs of the second class, *i.e.* to those with a separate commission of the peace.[2] In other words, county Justices possess *de jure*, but seldom exercise, a concurrent and co-ordinate jurisdiction with borough Justices in those towns which, while having a separate commission of the peace, are without a separate quarter sessions. If the county Justices act first in any magisterial matter within the borough, then their jurisdiction immediately attaches so as to oust the jurisdiction of the borough magistrates, so far as that matter is concerned. If the borough magistrates act first, then the jurisdiction of the county Justices will be similarly ousted.[3]

The position of a borough Justice is defined by the Municipal Code as follows:—

A Justice for a borough shall, with respect to offences committed and matters arising within the borough, have the same jurisdiction and authority as a Justice for a county has under any local or general Act, with respect to offences committed and matters arising within the county; except that he shall not by virtue of his being a Justice for the borough act as a Justice at

Powers of borough Justices.

[1] M.C.A. 1882, secs. 154-188.

[2] For the right of the county Justices to act in these boroughs, cf. Mayor of Reigate *v.* Hart, L.R. 3 Q.B. 244. Some of these boroughs have in their charters a non-intromittent clause, in which case county Justices have no legal right to enter.

[3] Cf. *Magistrates' Annual Practice*, by C. M. Atkinson, p. 4; and R. *v.* Saintsbury, 4 T.R. 456.

any court of gaol delivery or quarter sessions, or in making or levying any county or borough rate.[1]

In other words, a borough Justice has in the borough a petty sessional jurisdiction similar to that of a county Justice in a county; and it should be added that, though the authority of borough Justices is confined to the borough, their summonses for appearance and their warrants (except warrants for commitment) may be served or executed anywhere in the county or within seven miles of the borough, as though issued or endorsed by Justices having jurisdiction in the place where such summonses or warrants were served or executed.[2] It is, of course, a general rule that the judicial authority of a Justice of the Peace does not extend beyond his local jurisdiction—that is to say, the borough or county for which he is appointed. But it has been held that a county Justice may perform purely ministerial acts out of his own county.[3]

Although borough Justices (other than the Recorder) may not as such act at any court of quarter sessions, or deal with any matter which belongs to quarter sessions, they are, nevertheless, provided by the Summary Jurisdiction Acts and other legislation with a plentiful supply of work, for the accomplishment of which it is necessary to have a clerk; and the Justices' clerk is an officer whose appointment is made compulsory, and whose qualifications are defined in the Municipal Code. The Clerk to the Justices must be a fit person removable at the pleasure of the Justices. He may not be a borough alderman, or borough councillor, or clerk of the peace, either of the borough or of the county in which the borough is situate. Nor may he be the partner of any such clerk of the peace.[4] Moreover, "the clerk to the Justices shall not by himself or his partner or otherwise be directly or indirectly employed, or interested in the prosecution

Their clerk.

[1] M.C.A. 1882, sec. 158 (1). [2] M.C.A. 1882, sec. 223.

[3] A ministerial act may be defined as one for which a mandamus will lie. See R. *v.* Stainforth, 11 Q.B. 66; and Paley's *Summary Convictions*, 7th edit., pp. 19-22. For the principle governing cases in which a Justice though qualified may refuse to act, cf. Lord Cairns in Julius *v.* the Bishop of Oxford, L.R. 5 A.C. 214.

[4] Sir Samuel Johnson states in his edition of the Municipal Code that "the appointment as clerk of the peace of a borough of a managing clerk to a firm, which comprised the town clerk and clerk to the Justices as one of its partners, has passed unquestioned."

of any offender committed for trial by those Justices, or any of them, at any court of gaol delivery or quarter sessions."[1] The clerk to a bench of county Justices is not similarly prohibited, although it is most desirable that he should be.[2] Larger towns of the second class form separate licensing jurisdictions; but the licensing authority of the borough Justices, in these as well as in the superior class of quarter sessional boroughs, is, as regards refusals to renew or to transfer licenses, subject to an appeal to quarter sessions for the county, the Recorder, strange to say, not having been made a licensing authority. This part of the licensing law is felt to be anomalous.

Boroughs with separate quarter sessions.

In the higher class of boroughs, comprising those which possess their own quarter sessions as well as their own magistrates, the organisation of justice is completely independent of the county, and the appeals from the borough bench, except in the single instance of licensing, go not to the county quarter sessions but to the separate court of quarter sessions for the borough. The power to "grant that a separate court of quarter sessions be holden in and for the borough," or to revoke the grant, is in the Crown on the petition of a borough council to the King in Council.[3] In such a grant no other powers than those necessary for establishing and maintaining the court are to be conferred.[4] The petition must set forth the grounds of the application and the salary which the Borough Council is willing to pay its Recorder. Another office incidental to boroughs having separate quarter sessions is that of Clerk of the Peace, who is to be distinguished from Clerk to the Justices. The Clerk of the Peace is appointed by the Borough Council and holds his office during good behaviour. He may be paid either by fees or by salary. If two Justices exhibit a complaint against him at borough quarter sessions, the Recorder may suspend or remove him; but the clerk may appeal to the Lord Chancellor against the Recorder's decision.[5] The appointment of the Recorder himself, who

The Recorder.

[1] The provisions respecting the clerk to the borough Justices will be found in M.C.A. 1882, sec. 159.

[2] Cf. *Magistrates' Annual Practice* (1900), by C. M. Atkinson, p. 18.

[3] See for the grant M.C.A. 1882, sec. 162, and for its revocation Local Government Act 1888, sec. 38 (7).

[4] Local Government Act 1888, sec. 37.

[5] See 27 and 28 Vict. c. 65.

must be a barrister of at least five years' standing, is made by the Crown. He holds office during good behaviour, and is by virtue of his office a Justice of the Peace for the borough. He may combine with the recordership the office of revising barrister, but not that of alderman, councillor, or stipendiary magistrate, nor is he eligible to serve in Parliament for the borough. His duty is to hold "once in every quarter of the year, or oftener, if and as he thinks fit, or the Secretary of State directs, a court of quarter sessions in and for the borough." The court is a court of record and has cognisance of all crimes, offences, and matters cognisable by courts of quarter sessions for counties in England; and the Recorder, though sole Judge, has power "to do all things necessary for exercising that jurisdiction as fully as those courts."[1] But the statute, after putting the borough quarter sessions in the place of the county quarter sessions, proceeds to make certain reservations as follows:—

> The Recorder shall not, by virtue of his office, have power—
> (*a*) To allow, apportion, make, or levy any borough rate; or
> (*b*) Subject to the provisions of this Act respecting appeals from a rate, to do any act in relation to the allowance, apportionment, making, or levying of any rate whatsoever; or
> (*c*) To grant any license or authority to any person to keep an inn, ale-house, or victualling-house to sell exciseable liquors by retail; or
> (*d*) To exercise any power by this Act specially vested in the Council.[2]

The Recorder may appoint a Deputy Recorder to act in his absence at the next quarter sessions. If both the Recorder and Deputy Recorder are absent, it is the duty of the Mayor to open the Court and adjourn the holding to such day as he causes to be proclaimed; but the Mayor may in no case act for the Recorder as judge of the Court.[3] If the Recorder considers that the sessions are likely to last more than three days, he may, with the approval of the Borough Council, but not otherwise, order a second court to be formed, and may appoint as Assistant Recorder a barrister of five years' standing "to preside therein, and try such felonies and misdemeanours as may be referred to him therein."[4] In that case the Recorder also appoints an additional crier, and the Clerk of the Peace appoints an assistant

[1] M.C.A. 1882, sec. 165 (3).
[2] M.C.A. 1882, sec. 165 (4).
[3] M.C.A. 1882, sec. 167.
[4] M.C.A. 1882, sec. 168.

clerk of the peace. The approval of the Town Council is no doubt required on account of the extra expense which might be entailed by a second court. The approval must be by resolution, certified and signed by the Mayor, or two Aldermen, or the Town Clerk. The resolution continues in force for twelve months, *i.e.* for four quarter sessions.

The councils of quarter sessional boroughs having more than 10,000 inhabitants[1] have the further duty of appointing a fit person, who may not be an alderman or councillor of the borough, to be borough coroner. The coroner is paid twenty shillings for every inquisition duly taken in the borough, and ninepence "for every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition."[2]

The reform of the borough court of appeal (quarter sessions) by the provisions for the appointment of a recorder was an important step in the reorganisation of municipal justice. But the Act of 1835 went further. Impressed by the advantages conferred on London by the substitution of paid magistrates knowing the law for Justices, who were usually incompetent and sometimes worse, Parliament resolved to empower borough councils to obtain a salaried police magistrate, now called a stipendiary magistrate.[3] For this purpose they are required to present a petition for his appointment to the Secretary of State, fixing the amount of the salary they propose to pay. The King may then, on the nomination of the Home Secretary, appoint to that office a barrister of seven years' standing.[4] Only twenty-one large towns,[5] including the Staffordshire Potteries district (which comprises four boroughs), have up to the present time availed themselves of this power, which would, no doubt, have been much more widely adopted had the salary been payable by the State.

Stipendiary magistrates.

[1] This limitation was introduced by the Local Government Act of 1888, sec. 171.

[2] For the borough coroner, see M.C.A. 1882, sec. 171, and the Fourth and Fifth Schedules.

[3] M.C.A. 1835, sec. 99.

[4] The appointment is now made under M.C.A. 1882, sec. 161, or under a local Act, cf. 2 and 3 Vict. c. 71.

[5] Bristol, Newcastle, Northampton, Preston, and Bolton are examples of large towns without a stipendiary magistrate.

A stipendiary magistrate tries all the more serious cases; but the unpaid borough magistrates continue to exist and to act, though they do not usually sit in the same court with the stipendiary.

A few boroughs, it may be added, still possess courts with a civil jurisdiction at which small civil causes can be heard. Liverpool, for instance, has in the Court of Passage an old civil court founded by charter over which the Lord Mayor nominally presides, all the writs being issued in his name. But the real Judge is an assessor appointed by the Liverpool City Council at a salary of £1000 a year. It is cheaper than the County Court, and has a limited Admiralty jurisdiction. But the practice and procedure are antiquated.

Two other officials connected with municipal justice who remain to be mentioned are the Sheriff and Lord Lieutenant—dignitaries who are still appointed in some of the counties of towns or cities, as, for example, in Nottingham. Their duties, however, like those of the same officers in the county, are now only formal, though they involve the holder in a certain amount of expenditure on display and entertainments.[1]

In summing up this chapter upon borough jurisdictions, with which our description of English municipalities concludes, we may once more draw attention to quarter sessions. The possession of a separate court of quarter sessions, with a recorder, marks the independence of a borough as a seat of justice. Quarter sessional boroughs are for all practical purposes, except licensing, exempt from the jurisdiction of Justices of the Peace for the county. The inferior boroughs may or may not possess a separate commission of the peace. Those which have such a commission are in practice usually free from the petty sessional jurisdiction of the county; but each of the inferior classes is both in law and in fact subject to the appellate jurisdiction of the quarter sessions for the county. But important as these differences are, they are differences not of justice but of administration, and are so little thought of that many county boroughs neither possess nor

[1] The Nottingham Sheriff is a sort of under-study to the Mayor, *e.g.* the Mayor gives a ball and the Sheriff gives a children's dance. Royal Comm. 1894, evidence Q. 9730. The Sheriff is usually elected out of the Council. The office of Sheriff of Nottingham costs the holder from £500 to £1000 a year.

desire to possess a separate court of quarter sessions. For most purposes of local government, properly so-called, all municipal boroughs enjoy a common measure of qualified independence. It is to the Municipal Code of 1835, which separated the province of justice from the province of administration, that the smaller boroughs owe their exemption from county government. Under that law, as we have seen, which still stands in the improved and amended version of 1882, almost all large boroughs, as well as many of moderate size, enjoy exemption not only from county government, but from county jurisdiction —not only from county councils, but from county justices.

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